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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; HERSCHEL HENSON

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; JOHN DOE; MARY DOE

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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INDEX

Page

1. Opinion of the United States Court of Appeals for the Fourth Circuit in *District 29, United Mine Workers of America; Herschel Henson v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 86-3709(L) (4th Cir. August 13, 1987) and *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 87-3018 (4th Cir. August 13, 1987) 1a

2. Judgment of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. Royal Coal Company and United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 85-0292 (S.D. W.Va. January 5, 1987)..... 9a

3. Memorandum Opinion of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. Royal Coal Company and United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 85-0292 (S.D. W.Va. January 5, 1987)..... 11a

4. Judgment of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 86-0430 (S.D. W.Va. July 10, 1986)..... 30a

5. Memorandum Opinion of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 85-0430 (S.D. W.Va. July 10, 1986) 32a

Page

6. Order of the United States Court of Appeals for the Fourth Circuit denying Petition of Appellants for Rehearing and Suggestion for Rehearing In Banc, Nos. 86-3709 (L) and 87-3018 (4th Cir. October 16, 1987). 40a

7. Opinion of the United States Court of Appeals for the Fourth Circuit in *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985)..... 42a

8. United Mine Workers of America 1974 Benefit Plan and Trust, effective June 7, 1981, pages 3 to 4; 8 to 8a..... 50a

9. United Mine Workers of America 1974 Benefit Plan and Trust, effective October 1, 1984, pages 74 BPT.2 to 74 BPT.3; 74 BPT.7 to 74 BPT.8 ..... 53a

10. National Bituminous Coal Wage Agreement of 1978, pages 14 to 16; 18; 19 ..... 57a

11. National Bituminous Coal Wage Agreement of 1981, pages 14 to 15; 17; 18..... 71a

12. National Bituminous Coal Wage Agreement of 1984, pages 14 to 15; 16 to 17; 18..... 84a

13. United Mine Workers Proposal, August __ , 1984 ..... 98a

14. Statutes Involved

Section 8(d) of the National Labor Relations Act, 1947, 29 U.S.C. § 158(d) 102a

Section 402 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1102 104a

Section 404 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1104 105a

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 86-3709(L)

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; HERSCHEL HENSON,
Plaintiff—Appellee,

v.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST;
Defendant—Appellant,

THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.,
Amicus Curiae

and

MANLO MINING CO., A DOMESTIC CORP., GOPHER MINING CO., A FOREIGN CORPORATION
Defendant.

No. 87-3018

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; JOHN DOE; MARY DOE,
Plaintiff—Appellee,

v.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Defendant—Appellant,

and

ROYAL COAL COMPANY,
Defendant.

THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.,
Amicus Curiae

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Dennis Raymond Knapp, Senior District Judge. (CA-5:86-430 and CA-85-292).

Argued: June 2, 1987 **Decided:** August 13, 1987

Before CHAPMAN, Circuit Judge, BRITT, U.S. District Judge for the Eastern District of North Carolina, and MacKENZIE, Senior U.S. District Judge for the Eastern District of Virginia, sitting by designation.

William Francis Hanrahan (Arent, Fox, Kintner, Plotkin & Kahn; Gerald E. Cole, Jr., General Counsel, United Mine Workers of America Health & Retirement Funds; Carolyn Mensi Petralia, Senior Associate Counsel on brief) for Appellants; Bradley James Pyles (Grant Crandall; Charles F. Donnelly; Crandall & Pyles; Michael H. Holland, General Counsel, Deborah Stern, United Mine Workers of America on brief) for Appellees; (Charles P. O'Connor; Margery Sinder Friedman; Morgan Lewis & Bockius on brief) for Amicus Curiae Bituminous Coal Operators' Association, Inc.

CHAPMAN, Circuit Judge:

The complicated health benefit plan for retirees and their widows existing in the coal industry is again before the court.[1] The health benefit plan protecting coal industry workers requires individual employers to provide retirement health benefits, with the "1974 Benefit Plan and Trust," an industry-

wide trust fund, to assume liability for these benefits when the worker's individual employer or its successor is no longer in business, as defined under the pertinent bargaining agreement. The difficult question presented in this appeal is, where the former employer remains "in business," as defined in the wage agreement, but is no longer legally liable to provide health benefits, must the 1974 Benefit Plan and Trust assume liability. Based on our reading of the terms of the agreements, and the intentions of the parties made manifest in entering those agreements, we affirm the district court's decision that the 1974 Benefit Plan and Trust must assume liability.

I

This appeal is a consolidation of two cases where the 1974 Benefit Plan and Trust refused to provide health benefits to pensioners. In one case,[2] the district court after conducting hearings issued a preliminary injunction against the 1974 Benefit Plan to prevent it from refusing to provide health benefits. In the other case,[3] the district court permanently enjoined the 1974 Benefit Plan from refusing to provide health and other non-pension benefits.

Prior to 1978, the 1974 Benefit Plan and Trust and its antecedent, created in 1950, were the sole means by which pensioners were provided with health benefits. Each mining company would contribute money, based upon its coal production, to the fund. The Bituminous Coal Operators Association (BCOA), a large group of coal producers, became worried that some of the smaller coal producers were manip-

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[1] See, *District 17, District 29, Local Union 7113 and Local Union 6023, United Mine Workers of America v. Allied Corporation*, 765 F.2d 412 (4th Cir. 1985)(en banc), and *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985).

[2] *District 29, United Mine Workers of America, and Herschel Henson v. The United Mine Workers of America 1974 Benefit Plan and Trust, Manlo Mining Co., and Gopher Mining Co.*, No. 5:86-0430 (S.D.W.V. July 10, 1986).

[3] *District 29, United Mine Workers of America, et al., v. Royal Coal Company and The United Mine Workers of America 1974 Benefit Plan and Trust*, No. 5:85-0292 (S.D.W.V. Jan. 5, 1987).

ulating their corporate structures and using the bankruptcy laws to evade their obligations to contribute to the 1974 Plan. Thus during negotiations for the 1978 wage agreement, the BCOA proposed that the 1974 Benefit Plan and Trust be eliminated, and that individual employers create individual means by which to supply retirement health benefits. The union demurred. The eventual compromise reached was that individual operators would have primary responsibility to provide retirement health benefits through private insurance carriers, but that the 1974 Benefit Plan would continue in existence in order to provide such benefits for "orphaned" workers: workers whose former employer or its corporate successor was no longer in business. The specific language in the collective bargaining agreement which provides that the 1974 Benefit Plan and Trust will be utilized only where a retiree's former employer is no longer in business reads as follows:

> The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:
>
> > (a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

> (b) is financially unable (through the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or a parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

Article XX(c)(3)(ii) of the 1981 and 1984 collective bargaining agreements.

Despite the patent limitation of the liability of the 1974 Benefit Plan and Trust to provide health benefits only "during the terms of this agreement," and only where the individual employer is "no longer in business," the general description to each of the many two-year collective bargaining agreements states that pensioners who retire before the effective date of each collective bargaining agreement are entitled to health benefits "for life" and their widows "until death or remarriage." The plaintiffs in these cases retired between 1976 and 1984, thus prior to the effective date of the 1984 collective bargaining agreement, which agreement contains in its general description the aforementioned language. These retirees' former employers, however, and their corporate successors are not signatories to the relevant wage agreements, and therefore these individual employers and their successors are no longer liable to provide health benefits. *See District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985). The corporate parent-successors of the individual employers, although not legally liable to pay health benefits, are apparently not "financially unable" to do so, and thus the literal provisions triggering the liability of the 1974 Benefit Plan and Trust only where the former employer or its successor is no longer in business are not satisfied. In other words, a former employer or its successor must have ceased all mining operation and be financially unable to provide benefits before it is deemed "no longer in business."

Thus the issue presented is whether the 1974 Benefit Plan must provide health benefits where the successor corporation of the former employer is financially able to provide benefits, but is not legally obligated to do so because it is not a signatory to the wage agreement. The district court held that the 1974 Benefit Fund must provide health benefits where the retiree's "last signatory employer is no longer able *or* required to provide such benefits." (Emphasis added.)

II

At the outset of our analysis we note that we agree with the district court's conclusion that the intentions of the parties in providing for retirement health benefits was to guarantee their provision for life. It is apparent from the record that the parties, in moving from a system wherein the health benefits were provided solely by the collective 1974 trust to a regime in which individual employers assumed primary liability, intended to change the method of providing health benefits, but they did not intend to create new, latent loopholes to coverage. The district court found that under the collective bargaining agreements and the 1974 trust, a retiring miner had been guaranteed benefits for life, and that the 1978 alterations in the procedures of providing these benefits did not alter that intention. We will not disturb the district court's findings and conclusions, which rely on the evidence and oral testimony submitted as an aid to construction of the contradictory language in the agreements.

The question remains, given the intention of the parties to provide lifetime benefits, whether the 1974 Benefit Plan and Trust must assume the burden of providing those benefits. It is clear that neither the former employer nor its corporate successor is legally liable for providing these health benefits. *See Royal*, *supra*. To construe the contract to create no liability on the part of the 1974 Benefit Plan would have the effect of defeating the expressed intention to provide lifetime benefits.

Given this intention of the parties, we will not permit the 1974 Benefit Plan and Trust to escape liability by its strict

adherence to the literal terms in the agreement. From its beginning this trust was intended as the safety net for "orphaned" retired miners. It is likely that the parties in negotiating the provision of lifetime health benefits simply did not consider, prior to our decision in *Royal*, that a former employer or its successor could remain financially able to pay benefits (and therefore "in business"), and yet not be legally obligated to do so. It is clear that the parties believed they were establishing a seamless garment in the contract by providing for liability on behalf of individual employers as long as they remained in business, and liability on behalf of the 1974 Benefit Plan when those employers ceased being in business. But because of the manner in which "in business" has been defined by the parties, the unforeseen separation of financial ability and legal obligation has given rise to a tear in the garment. The 1974 Benefit Plan and Trust was established and continued in order to supply the health benefit needs of "orphaned" retirees, and thus construing the contract to impose that obligation on the trust fund, when the legal obligations of the former employer has terminated, can only further the purposes for which the trust fund was created.

We therefore affirm the district court's result based upon our interpretation of the labor agreements. We do not reach the issues decided by the district court under the Employee Retirement Income Security Act.

The appellants in *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust and Royal Coal Company*, No. 87-3018, argue that the district court erred in its order requiring the 1974 Benefit Plan to reimburse the plaintiffs for all covered medical expenses incurred by Royal Coal Company pursuant to the preliminary injunction. The appellants argue that this order is ambiguous, as it might be read to require the plan to reimburse the plaintiffs for the attorneys' fees and disbursements that the plaintiffs were ordered to pay to Royal, in contradiction to Fed. R. Civ. P. 65(c). The appellants do not dispute the requirement that the plan reimburse plaintiffs for $4,310.71 in medical expenses paid by Royal.

Because the district court's order is ambiguous on the issue of reimbursement of attorneys' fee, we conclude that this issue can best be clarified by the district court and we remand this issue to the district court for such purpose. The judgment of the district court is

AFFIRMED IN PART
AND REMANDED.

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:85-0292

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 6064, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HENSHAW, DISABLED RETIREE; AND JOHN DOE AND MARY DOE,

Plaintiffs,

v.

ROYAL COAL COMPANY AND THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Defendants.

JUDGMENT ORDER

For the reasons stated in the Court's Memorandum Opinion of even date herewith, which Memorandum Opinion is ORDERED filed and made a part of the record in this action, it is hereby ORDERED as follows:

1. That judgment be entered herein in favor of the plaintiffs against the United Mine Workers of America 1974 Benefit Plan and Trust, its agents, employees, and all persons acting on its behalf, and said defendants be permanently restrained and enjoined from refusing or failing to provide the health care coverage, as such coverage is specified in the 1981 and 1984 wage agreements of the United Mine Workers of America 1974 Benefit Plan and Trust, for all eligible

pensioners under the UMWA 1974 Benefit Plan, whose last classified employment was with Royal Coal Company, as well as their surviving spouses and eligible dependents;

2. That the 1974 Benefit Plan and Trust reimburse the plaintiffs for all covered medical expenses incurred since October 1, 1984, including all expenses incurred by Royal Coal Company pursuant to the preliminary injunction heretofore entered against it;

3. That Royal Coal Company be dismissed as a defendant in this action; and

4. That this action be dismissed and stricken from the docket of this court.

The Clerk is directed to mail certified copies of this Judgment Order and of the Court's Memorandum Opinion to all counsel of record herein.

DATED: January 5, 1987

/s/_____
DENNIS R. KNAPP, JUDGE

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:85-0292

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 6064, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HENSHAW, DISABLED RETIREE; AND JOHN DOE AND MARY DOE,
Plaintiffs,

v.

ROYAL COAL COMPANY AND THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Defendants.

MEMORANDUM OPINION

Plaintiffs filed this action on March 8, 1985, pursuant to the provisions of Section 301 of the Labor Management Relations Act of 1947 (LMRA) and Section 502 of the Employee Retirement Income Security Act (ERISA), asserting that either defendant Royal Coal Company (Royal) or the United Mine Workers of America 1974 Benefit Plan and Trust (1974 Benefit Plan and Trust) is responsible for providing health benefits to the individual plaintiffs involved herein. On April 23, 1985, this Court entered a preliminary injunction enjoining Royal and all other persons acting on its behalf from failing to provide health benefits and life insurance under Article XX of the National Bituminous Coal Wage Agreement

(Wage Agreement) for the individual plaintiff-employees and others similarly situated pending resolution of this matter. Subsequently, the Fourth Circuit Court of Appeals on appeal from said order held that Royal's obligation to provide its former employees with health benefits terminated upon the expiration of the 1981 Wage Agreement. Since Royal was not signatory to the successor contract, the 1984 Wage Agreement, the appellate court accordingly vacated and remanded this case to the district court for further proceedings. Following a hearing on August 13, 1985, this Court issued a preliminary injunction enjoining and restraining the 1974 Benefit Plan and Trust from failing to provide said benefits to Royal's former employees and their dependents.

On July 9, 1986, the Court conducted further proceedings on the merits of this matter, and having carefully considered the entire record in this matter, including the argument of counsel, the Court herein makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiffs District 29, Local Union 5821, and Local Union 6064, UMWA, are each labor organizations within the meaning of §2(5) of the LMRA, 29 U.S.C. §152(5), and represent the former employees of Defendant Royal.

2. Plaintiff Garland Walkup resides in Rupert, West Virginia, and was, until retiring in November 1977, a classified union employee of Royal. Since that time he has been receiving a regular UMWA retirement pension from the 1974 Benefit Plan and Trust.

3. Plaintiff Madeline R. Thomas is the widow of Joe Thomas, who died on January 29, 1982, and who, until retiring on a UMWA pension on April 18, 1980, was a classified union employee of Royal. Since February 1982 Madeline R. Thomas has been receiving a UMWA widow's pension from the 1974 Benefit Plan and Trust.

4. Plaintiff Joseph Hanshaw is a resident of Lansing, West Virginia, and was a classified union employee of Royal

until becoming disabled and retiring in September 1977. Since on or about December 1979 he has been receiving a UMWA disability pension from the 1974 Benefit Plan and Trust.

5. Plaintiffs John and Mary Doe are all those persons similarly situated with the named individual plaintiffs as former employees of Royal and whose claims are representative of a group of approximately 78 retired and disabled coal miners, or their widows, whose last signatory employer was Royal. All of the group members retired prior to October 1, 1984, the expiration date of the 1981 Wage Agreement, and the majority retired prior to June 5, 1981, the effective date of the 1981 Wage Agreement.

6. Defendant 1974 Benefit Plan and Trust is an employee benefit plan within the meaning of Section 3(3) of ERISA. 29 U.S.C. §1002(3). The 1974 Benefit Plan and Trust was established on December 6, 1974 through collective bargaining between the International Union, UMWA, and the Bituminous Coal Operators Association, Inc. (BCOA) as part of the 1974 Wage Agreement. The 1974 Benefit Plan and Trust was amended and continued in existence by the collective bargaining parties as part of the 1978, 1981 and 1984 wage agreements.

7. Defendant Royal is a West Virginia corporation engaged in commerce within the meaning of §2(2) and 2(7) of the LMRA, 29 U.S.C. §152(2) and 152(7), at all times relevant hereto.

8. Defendant Royal was signatory to and bound by the 1968, 1971, 1974, 1978, and 1981 wage agreements. The 1981 Wage Agreement became effective on June 7, 1981 and expired on September 30, 1984.

9. Pursuant to the 1978 and 1981 wage agreements, Royal provided health and other non-pension benefits to its active and retired employees, including the individual plaintiffs, through an individual employer benefit plan, pursuant to the terms of Article XX(c)(3) ("Health and Retirement Benefits—1974 Plans and Trust") of those wage agreements.

10. Royal has ceased mining coal and has not become signatory to the successor wage agreement of the 1981 Wage Agreement, the 1984 Wage Agreement. Royal maintained an individual employer plan, pursuant to the terms of Article XX of the NBCWA, which provided health and other non-pension benefits to its retirees and disabled employees/pensioners during the term of the 1981 Wage Agreement. Upon the termination of the 1981 Wage Agreement on September 30, 1984, Royal ceased providing said benefit coverage to its retirees and disabled employees and other eligible beneficiaries.

11. Prior to the 1974 Wage Agreement, from 1950 to 1974, the UMWA Welfare and Retirement Fund provided pension and health benefits to those persons eligible from a single trust fund established by the UMWA and the BCOA.

12. Under the UMWA Welfare and Retirement Fund, a board of three trustees established the eligibility requirements and the level of benefits to be paid with respect to both pension and health benefits.

13. Between 1946 and 1974 the trustees of the Fund established various pension, health, and welfare benefits through the adoption of formal resolutions. By resolution UMWA members entitled to receive health benefits from the Fund included miners who were "receiving a retirement pension from the Fund and not employed outside the coal industry." By various resolutions the trustees extended health benefits to additional classes of beneficiaries, including miners' dependent children, widows of miners killed in mine accidents, and disabled miners.

14. Although the trustees of the UMWA Welfare and Retirement Fund could, in their discretion, establish eligibility requirements and the level of benefits to be paid to eligible beneficiaries, the health benefits provided to retired mine workers were never decreased or eliminated, and retirees were entitled under the Welfare and Retirement Fund to receive health benefits concurrent with pension benefits, that is, they were entitled to receive health benefits for life. The health benefits were provided by the trust fund

and did not terminate at the end of a particular bargaining agreement.

15. In 1974 the UMWA and the BCOA agreed, in contract negotiations, to continue the UMWA Welfare and Retirement Fund in the form of four new plans and trust, namely, the 1950 Pension Plan and Trust, the 1950 Benefit Plan and Trust, the 1974 Pension Plan and Trust and the 1974 Benefit Plan and Trust. The 1950 Pension Plan and Trust and the 1950 Benefits Plan and Trust continued to provide pension and health benefits to retirees, disabled employees and other pensioners and beneficiaries who had retired or otherwise had become eligible for benefits prior to January 1, 1976. Under the terms of the 1974 Wage Agreement, a 1950 pensioner was entitled to "retain his health services card until death, and upon his death, his widow was to retain a health services card until her death or remarriage."

16. Under the terms of the 1974 Wage Agreement miners who retired after January 1, 1976 were entitled to receive pensions and health benefits under the 1974 Pension Plan and Trust and the 1974 Benefit Plan and Trust, respectively. Like the 1950 pensioners, the 1974 pensioners were also carried over into the existing health and medical programs administered by the health and retirement funds. Upon a 1974 pensioner's death, his widow was entitled, under the terms of the wage agreement, to retain his health services card until her death or remarriage. Additionally, disabled and retarded children of holders of health services cards were covered so long as a surviving parent held a card.

17. Each of the four pension and benefit plans and trusts established under the 1974 Wage Agreement was defined and described in the collective bargaining agreement itself, in an article of the contract entitled "Summary of Principal Provisions, UMW Health and Retirement Benefits." The contract thus explicitly provided that a retired miner under both the 1950 Pension Plan and Trust and the 1974 Pension Plan and Trust would retain a health services card "until death," that his widow would retain the health services card "until her death or remarriage," and that disabled miners would retain

the health services card "for life." The 1978, 1981, and 1984 wage agreements, the successor agreements to the 1974 Wage Agreement, included a similar summary of benefits. The eligibility requirements for health benefits set forth in the 1974 Wage Agreement were repeated in virtually identical language in the 1978, 1981, and 1984 wage agreements.

18. In 1977 the various retirement and welfare funds experienced severe financial difficulties by reason of a decline in royalty payments. Accordingly, the trustees instituted a system of copayments for health benefits through the remaining term of the 1974 Wage Agreement.

19. During negotiations for the 1978 Wage Agreement, the BCOA proposed eliminating the 1974 Benefit Plan and Trust and replacing it with individual employer plans. However, the UMWA rejected the plan and as finally negotiated and approved, the 1978 Wage Agreement provided, in pertinent part:

> Article XX(c)(iii): The 1974 Benefit Plan and Trust shall continue after May 31, 1978, for the sole purpose of providing health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) from which he retired is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last classified employment was with a signatory Employer which is no longer in business.

20. The "no longer in business" language in the 1978 and 1981 wage agreements and the trust documents is ambiguous and requires interpretation. Notwithstanding the defendant 1974 Benefit Plan and Trust's contention that the "no longer in business" language is unambiguous on its face, the provision of a health services card for life to pensioners who retire

under each and every prior wage agreement to the successor wage agreement indicates that a pensioner cannot be divested of health benefits. Indeed, the Trustees themselves, in directing that the Funds' office of the General Counsel prepare a memorandum and a "Q and A" to define the "no longer in business" language, have indicated that they have found the language ambiguous and in need of interpretation.

21. Around 1980 an increasing number of signatory employers ceased their coal mining operations as economic conditions in the coal fields worsened. As a result laid-off miners whose employers had gone out of business or had insufficient assets to pay health benefits found themselves without health coverage. Therefore, in 1980 the UMWA and the BCOA entered into an agreement to appropriate a separate fund to provide extended health coverage to these laid-off miners. As a result a "$2 Million Fund" was established. During the negotiations to formalize the "Fund," the BCOA voiced its concern to then-UMWA International President Sam Church that the "no longer in business" definition utilized by the Trustees was susceptible to manipulations by employers who took advantage of the "Q and A H-16" definition to shirk their responsibility to their pensioners.

22. The UMWA readily agreed to change the "no longer in business" language to assure that an employer could not shift its liability for pensioner health benefits to the Benefit Plan through a scheme of corporate manipulation. Accordingly, the "$2 Million Fund" amended the "no longer in business" language to define an employer as no longer in business if it were "financially unable (through either the business entity that has ceased operation . . . including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether it is covered by the 1978 wage agreement or not) to provide health and other non-pension benefits to its non-retired, laid-off miners, as required by Article XX of the 1978 Wage Agreement." The new "no longer in business" language, contained in the "Memorandum of Understanding," dated February 27, 1980, was considered reasonable and noncontroversial by both parties.

23. Neither the 1978 nor 1981 wage agreements, the trust documents incorporated therein, nor the bargaining history presented to the Court at trial, evidence an intent by the parties to reduce the level of benefits, to exclude or eliminate certain categories of beneficiaries from benefits, to cause the forfeiture or loss of benefits upon the occurrence of certain contingencies or to change the nature of the benefits provided.

24. The evidence clearly shows that in establishing individual employer benefit plans and in retaining the 1974 Benefit Plan for "orphaned" pensioners, the parties intended to assure the financial soundness of the health benefit scheme for the beneficiaries. It is apparent from the evidence that the parties intended to change the method of providing those benefits, but never intended to change the expectancy of the pensioners to receive those benefits. The evidence, which the Court finds credible, particularly that of Sam Church, former International President, establishes that health benefits for pensioners were to be continued either from the employer or successor or from the trust.

25. The intent of the UMWA and the BCOA to provide continuing health and other benefits to pensioners and their widows running concurrent with their pensions is clearly evidenced by the language of each of the wage agreements. The UMWA and the BCOA agreed in negotiations for the 1978, 1981, and 1984 wage agreements to provide a health services card for life to pensioners who retired prior to the date of each of those agreements. Each of those wage agreements repeats essentially the same language in each of the various categories of eligible beneficiaries under Article XX.

26. The trustees adopted "Q and A H-16" which provided that the 1974 Benefit Plan and Trust would assume responsibility for providing health benefits to pensioners if the last signatory employer was no longer engaged in the coal business, and had no successor that would be liable for those benefits. "Q and A H-16" provided the Trustees with guidance in making "no longer in business" determinations during the term of the 1978 Wage Agreement.

27. Based upon the two cents per man hour royalty negotiated by the parties under the 1978 Wage Agreement on behalf of the 1974 Benefit Plan and Trust, said Trust accumulated approximately $35 million during the term of the contract. In 1981 and again in 1984 the parties were able to reduce the royalty to the 1974 Benefit Plan and Trust to zero cents per man hour because the Trust had accumulated funds during the 1978 Wage Agreement sufficient to pay the benefits of the current beneficiaries of the Trust.

28. Article XX(c) (3) (ii) of the 1981 Wage Agreement provided that the 1974 Benefit Plan and Trust would provide benefits to retired miners

> "who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory employer (including successors and assigns) for whom such miner last worked in signatory, classified employment, is no longer in business. . . . For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an employer is considered to be no longer in business only if the employer: (a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and (b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors and assigns, if any, and any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses."

29. Royal ceased providing benefits to the individual plaintiffs upon the expiration of the 1981 Wage Agreement on September 30, 1984. The estimated cost of continuing to provide those benefits after September 30, 1984, was approximately $38,000 per month. Royal does not have the assets to provide such benefits.

30. Since at least April 1978, all or a majority of the stock of Royal has been owned by another corporation. Since January 29, 1983, 83% of the issued and outstanding shares of Royal have been owned by American Hawaiian Steamship Company (American Hawaiian), a corporation. American Hawaiian is financially able to provide benefits to Royal's pensioners and their dependents, although it has never been a signatory to a wage agreement.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter pursuant to Section 301 of the LMRA of 1947, 29 U.S.C. §185, and §502 of ERISA of 1974, 29 U.S.C. §1132.

2. Although ERISA does not impose any minimum vesting requirements with respect to the employee welfare benefits plans, the statute evidences no intent by Congress to endorse unfettered termination of benefits such as those provided by the UMWA 1974 Benefit Plan and Trust. Whether pensioners are entitled to health and other non-pension benefits as a vested, lifetime benefit which is not limited to the duration of a particular collective bargaining agreement depends upon the intent of the parties. *District 29, UMWA v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985); *International Union, United Automobile, Aerospace and Agricultural Implement Workers v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983); *Bower v. Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984); *Upholsterer's International Union v. American Pad and Textile Co.*, 372 F.2d 427 (6th Cir. 1967).

3. The language of the collective bargaining agreement viewed in the light of the relative position of the parties and the clear purposes sought by them manifest a clear intention to provide health benefits for pensioners and their widows. Traditional rules of contract interpretation are to be applied as long as their application is consistent with federal labor law. The Court will look initially to the language of the collective bargaining agreement for clear manifestations of intent. However, the intended meaning of even the most

explicit language must be viewed in light of the context and other indicia of intent which gave rise to its inclusion. Accordingly, the Court will interpret the particular provision in question as part of the integrated whole and attempt to construe its language consistent with the entire document and the relative positions and purposes of the parties. The terms of a collective bargaining agreement should be construed so as to render none nugatory and to avoid illusory promises. Variations in language used in other durational provisions of the agreements may provide inferences of intent useful in clarifying a provision whose intended duration is ambiguous. See, *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Yard-Man, Inc.*, supra, at 1480, and case cited therein.

4. The 1974, 1978, 1981, and 1984 wage agreements provide, in Article XX, a "Summary" or "General Description of the Health and Retirement Benefits," with respect to different classes of pensioners, that

> (s)uch pensioner will be entitled to retain a health services card for life. Upon his death, his widow will retain a health services card until her death or remarriage, subject to the $500 earnings limit.

The clear language thereof expresses the intent of the parties to provide the retired mine worker with health benefits as a vested lifetime benefit, as had been the retired miner's entitlement under the UMWA Welfare and Retirement Plan since at least the 1950's.

5. To alter the nature of a pension-related benefit which has been a lifetime benefit for more than 25 years to one that exists only during the term of the collective bargaining agreement, as defendant 1974 Benefit Plan and Trust contends, requires some affirmative indication that such is the intent of the parties to the collective bargaining process. Nothing in the collective bargaining agreements or plan documents indicates any intention on the part of the parties to effect such a major change in the expectancy of benefits. On the contrary, the Court finds that the wage agreement, the plan documents, and the bargaining history presented by

both the Union and the Benefit Plan evidences that the parties did not intend to change the expectancy of pensioners to health benefits which are provided concurrent with their pensions.

6. The parties have clearly bargained in previous contracts for the extension of lifetime benefits to additional beneficiaries. Such benefits were extended to widows in the 1974 Wage Agreement. *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562, 102 S.Ct. 1226, 71 L.Ed.2d 419 (1982).

7. Although a pensioner is entitled to benefits "for life," the 1978 Wage Agreement and successor contracts limited the liability of the employer for pensioners' health and other non-pension benefits to the term of the contract, as expressed in Article XX(h)'s provision that "the Employers agree to fully guarantee the pension and health benefits . . . during the term of this Agreement." If the parties had intended that the individual pensioner's entitlement to benefits (rather than the employer's responsibility to provided said benefits) was one which existed only during the term of the agreement, the Court presumes that the parties had the ability and expertise to draft language so stating. The collective bargaining agreements indicate that the health benefits provided to pensioners are to be lifetime benefits, although the employer's particular liability for providing those benefits is limited to the term of the particular wage agreement.

8. In 1978 the parties retained the 1974 Benefit Plan and Trust for the specific purpose of providing health and other benefits to retired miners who became "orphans" by not being covered under an employer plan. The retention of the 1974 Benefit Plan and Trust to act as a "safety net" for these pensioners further indicates the parties' intent to ensure that the pensioners' historical entitlement to lifetime benefits continued. During negotiations preceding the 1978 Wage Agreement, the BCOA failed in its attempt to eliminate the 1974 Benefit Plan and Trust because of UMWA insistence that the 1974 Plan continue to provide benefits to those orphaned pensioners who might otherwise lose their benefits

as a result of the conversion to individual company plans from the multi-employer plan.

9. The parties intended that an employee's right to lifetime health benefits under the NBCWA vest upon his retirement. As such, each collective bargaining agreement, and the pension and benefit plans incorporated therein, constituted an offer to an employee who was qualified for retirement under that plan that he could accept by retiring during the term of the agreement. Once an employee so accepted, a binding agreement was entered into. The promise of pension or other retiree benefits, including the promise of lifetime health benefits contained in each collective bargaining agreement and the pension and benefit plans incorporated therein, constitutes an offer which upon performance of the required service by the employee becomes a binding obligation. See, *Rochester Corporation v. Rochester*, 450 F.2d 118 (4th Cir. 1971); *Hoefel v. Atlas Tack Corp.*, 581 F.2d 1 (1st Cir. 1978); *In Re Erie Lackawanna Railway Co.*, 548 F.2d 621 (6th Cir. 1977).

10. Retiree benefits are "status" benefits which normally continue as long as the prerequisite status is maintained. Thus, when parties contract for benefits which accrue upon achievement of retiree status, there is an inference that the parties intended those benefits to continue as long as the beneficiary remains a retiree. *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Yard-Man, Inc.*, supra; *Policy v. Powell Pressed Steel*, 770 F.2d 609 (6th Cir. 1985); *Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985).

11. Contracts such as those presented here have their genesis in industrial relationships that encompass factors not born of the moment but crated by economic necessity. This arrangement gives rise to the vested right in the employees covered by the contracts to continue to receive the emoluments of their labor beyond the life of the contracts. *Local 150-A v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985).

12. This unique arrangement for the provision of health benefits to retired employees in the coal industry began when in 1950 the parties created a multi-employer benefit plan which provided lifetime health and other benefits to all retired mine workers. In 1978 that multi-employer plan was converted to a system of providing such benefits through single-employer plans, yet retaining a "safety net" in the form of the 1974 Benefit Plan and Trust, to provide benefits to "orphaned" pensioners. The issue concerning the duration of entitlement to benefits of a pensioner must be distinguished from the question of the obligation of the last signatory employer to provide those benefits. Here, the plain language of the wage agreements establish and carry forward the 1974 Benefit Plan and Trust, which has been created by the parties to provide those benefits where there is no longer an employer responsible for doing so, and provide a health service card for life to each group of pensioners in each successive contract. To ignore the clear provision of each wage agreement for this "safety net" would render the purpose of the 1974 Benefit Plan and Trust worthless and the promise of a health services card for life no more than an illusion.

13. Inasmuch as Royal is not signatory to the 1984 Wage Agreement, its obligation to provide benefits to its pensioners terminated with the expiration of the 1981 Wage Agreement on September 30, 1984. *District 29, UMWA v. Royal Coal Company*, supra; *District 17, UMWA v. Allied Corporation*, 765 F.2d 412 (4th Cir. 1985).

14. Although American Hawaiian may be considered a "parent corporation" of Royal by virtue of its ownership of 83% of Royal's stock, any liability which it might have for providing health benefits to pensioners of Royal could only be derivative of the primary liability of Royal under its collective bargaining agreement with the union. Furthermore, there is no evidence that American Hawaiian and Royal share a centralized control of Royal's operation, share common officers or common control of Royal's labor relations, or other factors which might indicate a single employer or alter-ego relationship as those terms are commonly used in the context of labor relations. As Royal is no longer signatory to or bound

by a collective bargaining agreement with the union, the Court can discern no legal theory upon which American Hawaiian can be held liable for the benefits of the individual plaintiffs.

15. ERISA requires the disclosure and reporting to participants and beneficiaries of financial and other information regarding employee benefits plans covered by the Act. 29 U.S.C. §1001(b). That requirement specifically includes the requirement that such disclosures and summary plan descriptions include

> a statement clearly identifying circumstances which may result in . . . loss, forfeiture, or suspension of any benefit that a participant might otherwise reasonably expect the plan to provide on the basis of the [Summary Plan Description's] description of benefits . . . 29 C.F.R. §2520.102–3(1).

In the absence of such disclosure, a fiduciary under ERISA may be precluded from enforcing undisclosed forfeiture provisions. *Zittrouer v. Uarco Inc. Group Benefit Plan*, 582 F. Supp. 1471 (N.D.Ga. 1984); *Genter v. Acme Scale & Supply Co.* 776 F.2d 1180 (3rd Cir. 1985); *Blau v. Del Monte Corp.*, 748 F.2d 1348 (9th Cir. 1985).

16. Nothing in the 1978, 1981, or 1984 wage agreements, the 1974 Benefit Plan and Trust established pursuant to those wage agreements, or the Summary Plan Descriptions indicates to plan beneficiaries that their entitlement to health benefits may be forfeited if their last signatory employer subsequently fails to become signatory to a successor collective bargaining agreement, or that their entitlement to benefits is limited to or exists only for the duration of a particular collective bargaining agreement. On the contrary, the wage agreements repeatedly provide pensioners with a health services card for life, indicating that their continuing entitlement to health benefits from some entity under the contract is assured.

17. The obligations of the defendant 1974 Benefit Plan and Trust must be considered in the light of a unitary

interpretation of the 1974 Benefit Plan and Trust documents and the 1978, 1981, and 1984 wage agreements. The essence of the matter of pensioner benefits flows from a consideration of the contracts, the parties' bargaining history and objectives, and the trust documents in their entirety, rather than from the narrow parsing of the individual phrases. *Line Drivers Local 961 v. W. J. Digby, Inc.*, 341 F.2d 1016, at p. 1019 (10th Cir. 1965). The overwhelming purpose of the retention of the 1974 Benefit Plan and Trust was to ensure continuing uninterrupted coverage of benefits for eligible pensioners and disabled employees, and their dependents, in circumstances where their employer is no longer obligated to provide such benefits.

18. The Trustee of the 1974 Benefit Plan and Trust have a fiduciary duty to administer the trust for the benefit of the intended beneficiaries. They also have a duty to preserve the corpus of the trust, but not at the expense of the beneficiaries. In interpreting the provisions of the trust documents they have an obligation to look to the overall intent of the parties to the wage agreement for guidance in interpreting individual provisions, and to comprehend that terms used in a collective bargaining agreement carry with them certain connotations and understandings common to labor negotiations which the parties can be assumed to have knowingly and purposefully used.

19. Although the courts may not review for reasonableness provisions of a collective bargaining agreement allocating health benefits, those provisions are subject to the rule that vested benefits may not be altered without the pensioner's consent. *UMWA Health and Retirement Funds v. Robinson*, 455 U.S. 562, 102 S.Ct. 1226, 71 L.Ed2d (1982). Nothing in the collective bargaining agreements indicates any clear intention of the parties to deprive the individual plaintiffs of their benefits under the circumstances of this case. The interpretations of the Trustees of the collective bargaining agreement and trust documents must be supported by substantial evidence, and may not be arbitrary and capricious. *Maggard v. O'Connell*, 671 F.2d 568 (D.C.Cir. 1982).

20. The parties retained the 1974 Benefit Plan and Trust in the 1978 Wage Agreement for the purpose of securing the promise of lifetime benefits to pensioners who might become "orphaned" by their last employer. The wage agreements contain provisions, including the "no longer in business" language of Article XX, designed to ensure that the signatory employer is primarily responsible for the provision of benefits to the employees.

21. The purpose and intent of the "no longer in business" language adopted in the 1981 Wage Agreement was to protect the Benefit Plan and Trust from manipulation by employers seeking to transfer their liabilities to the Trust. The modification required the retired employees to completely exhaust their remedies against a signatory employer liable for their benefits before the 1974 Benefit Plan and Trust would assume responsibility for those benefits—that is, to exhaust the assets of the liable employer and to pursue any successor, assigns, related divisions, subsidiaries, or parent corporation, to the extent that such entity might be liable for those benefits as a matter of law. The evidence does not indicate that the parties modified the "no longer in business" language in 1981 so as to leave certain groups of pensioners without benefits, or to cause the forfeiture of benefits in the event that the pensioner's last employer did not become signatory to a successor collective bargaining agreement after he had retired. No other interpretation is consistent with the undisputed testimony and other evidence that the modification was completely noncontroversial and readily agreed to by the Union, without even a suggestion of dissent from the Union bargaining council or membership. It is inconceivable that a change intended or contemplated to have the result required by the Trustees' interpretation would have not evoked at least some concern on the part of the union or its members.

22. Under the provisions of Article II of the 1974 Benefit Plan and Trust, the Trustees, as fiduciaries responsible to the intended beneficiaries, have the authority to provide health and other non-pension benefits to pensioners and their eligible dependents where the beneficiaries would otherwise lose their benefits because their last signatory employer is

no longer able or required to provide such benefits. Although the obligation to provide benefits to the plaintiffs in this case devolves upon the defendant, 1974 Benefit Plan and Trust, the Trustees of the Benefit Plan are seeking to avoid the very purpose justifying the plan's existence. The record clearly shows that the Benefit Trust was created to provide for retired miners who became "orphans" by not being included in some other plan. This trust is the "safety net" intended to protect the plaintiffs, and it may not be removed by the trustees now that it is needed.

23. The defendant United Mine Workers of America 1974 Benefit Plan and Trust is obligated to provide health and other non-pension benefits under the provisions of the 1978, 1981, and 1984 wage agreements.

24. By failing to provide such benefits and failing to exercise the requisite care, skill, prudence, and diligence, particularly in failing to administer the trust for the benefits of its intended beneficiaries, the defendant United Mine Workers of America 1974 Benefit Plan and Trust has arbitrarily and capriciously breached and violated its fiduciary obligations and duties to the individual plaintiffs under ERISA. 29 U.S.C. §1001, et seq.[3]

Accordingly, the Court is of the opinion that the defendant, UMWA 1974 Benefit Plan and Trust, its agents, employees, and all persons acting on its behalf, should be permanently restrained and enjoined from refusing or failing to provide the health care coverage, as such coverage is specified in the 1981 and 1984 wage agreements and the UMWA 1974 Benefit Plan and Trust, for all eligible pensioners under the UMWA 1974 Benefit Plan, whose last classified employment was with Royal, as well as their surviving spouses and eligible dependents.

The Court is of the further opinion that the 1974 Benefit Plan and Trust should reimburse the plaintiffs for all covered medical expenses incurred since October 1, 1984, including all expenses incurred by Royal pursuant to the preliminary injunction against Royal heretofore entered herein.

For the reasons stated above, the Court is of the further opinion that Royal should be dismissed as a party to this action

DATED: January 5, 1987

/s/ _____
DENNIS R. KNAPP, JUDGE

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:86-0430

DISTRICT 29, UNITED MINE WORKERS OF AMERICA, AND HERSCHEL HENSON,
Plaintiffs,

v.

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST, MANLO MINING COMPANY, AND GOPHER MINING CO.,
Defendants.

JUDGMENT ORDER

In accordance with the Court's Memorandum Opinion of even date herewith, it is hereby ORDERED that the defendant, United Mine Workers of America 1974 Benefit Plan and Trust, its agents, employees and all persons acting on its behalf, are hereby restrained and enjoined from refusing or failing to maintain intact the health care coverage of the pensioner, Herschel Henson, under the UMWA 1974 Benefit Plan and Trust, whose last classified employment was with Manlo Mining Company, and his surviving spouse and dependents, as such coverage is specified in the National Bituminous Coal Wage Agreements of 1978, 1981, and 1984, and the UMWA 1974 Benefit Plan and Trust.

It is further ORDERED that this preliminary injunction will not become effective until plaintiffs post and file a bond herein in the sum of Five Thousand Dollars ($5,000), conditioned for such costs and damages as may be incurred or suffered by any party who is found to have been here

wrongfully restrained or enjoined, said bond and surety to be approved by the Court of the clerk thereof.

The Clerk is directed to mail certified copies of this order to counsel of record herein.

DATED: July 10, 1986

/s/ _____
DENNIS R. KNAPP, JUDGE

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:86-0430

DISTRICT 29, UNITED MINE WORKERS OF AMERICA, AND HERSCHEL HENSON,
Plaintiffs,

v.

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST, MANLO MINING COMPANY, AND GOPHER MINING CO.,
Defendants.

MEMORANDUM OPINION

Plaintiffs filed this action in the United States District Court on April 10, 1986, alleging that either defendant Manlo Mining Company (Manlo), defendant Gopher Mining Co. (Gopher), or defendant The United Mine Workers of America 1974 Benefit Plan and Trust (UMWA 1974 Benefit Plan and Trust), is responsible for the health benefits of the individual plaintiff, Herschel Henson. A temporary restraining order was entered on April 18, 1986, restraining defendant Manlo from refusing to provide health benefits and life insurance for said individual plaintiff. The matter is now before the Court on plaintiffs' motion for a preliminary injunction. The Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff, District 29, United Mine Workers of America, is a labor organization within the meaning of Section 2(g) of the Labor-Management Relations Act (LMRA), 29 U.S.C. §152(5), and, inter alia, represents the former employees of defendants Manlo and Gopher.

2. Plaintiff, Herschel Henson, who resides in Springdale, West Virginia, was, until retiring in December, 1978, a classified union employee of Manlo. Since May, 1979, he has been receiving a United Mine Workers of America pension.

3. Defendant Manlo is a viable and solvent West Virginia corporation, which at all relevant times was or is engaged in commerce within the meaning of Sections 2(2) and 2(7) of the LMRA, 29 U.S.C. §§152(2) and 152(7). Manlo was a "de facto" signatory to the National Bituminous Coal Wage Agreement of 1978.

4. During the term of the National Bituminous Coal Wage Agreement of 1978, defendant Gopher became a successor company to defendant Manlo.

5. Defendant Gopher was signatory to and bound by the National Bituminous Coal Wage Agreement on 1978, and other predecessor agreements, and the 1981 Agreement until the latter Agreement expired, effective September 30, 1984. Gopher is not signatory to the 1984 Agreement and is no longer actively engaged in mining coal.

6. Defendant UMWA 1974 Benefit Plan and Trust is an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1002(3). Said plan is an irrevocable trust created and perpetuated pursuant to the National Bituminous Coal Wage Agreements of 1974, 1978, 1981, and 1984, and has its principal office in Washington, D. C., with field service offices in Madison, Boone County, West Virginia, and Beckley, Raleigh County, West Virginia.

7. Pursuant to the provisions of the 1978, 1981, and 1984 National Bituminous Coal Wage Agreements, all health and non-pension benefits for working miners, pensioners and certain disabled miners and their dependents, are to be provided by the employer through private insurance carriers. In the event an employer is no longer able or required to provide the subject health and non-pension benefits for eligible working miners, pensioners, disabled miners and their eligible dependents, the Agreements provide that said benefits are

to be provided by defendant UMWA 1974 Benefit Plan and Trust.

8. The defendant UMWA 1974 Benefit Plan and Trust has determined that defendant Gopher is not "no longer in business" and further Gopher has refused to provide health and other non-pension benefits to the eligible plaintiff and his dependents.

9. Notwithstanding the Fourth Circuit Court of Appeals' recent ruling in the case of *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588, that the obligation to provide the subject benefits terminated upon the expiration of the 1981 National Bituminous Coal Wage Agreement, the defendant UMWA 1974 Benefit Plan and Trust has continued to refuse to provide the health and other non-pension benefits for this eligible pensioner of Gopher.

CONCLUSIONS OF LAW

1. Jurisdiction over this matter is conferred upon this Court pursuant to Section 301 of the LMRA of 1947, 29 U.S.C. §185, and Section 502 of ERISA, 29 U.S.C. §1132.

2. The individual plaintiff, upon retiring, became entitled to health and other non-pension benefits for life, pursuant to Article XX of the Agreements of 1978 and 1981, and Article II, Sections B, D, and E of the Employee Benefit Plan established pursuant to the Agreements.

3. Collective bargaining agreements, such as are involved here, fixed certain rights and obligations of the employer and employees, and of the trusts which they created. It was contemplated by the parties to those agreements that certain rights, including the right to health benefits, should continue in effect for the natural life of the worker. No other interpretation comports with the special nature of those labor agreements. Such contracts have their genesis in industrial relationships that encompass factors not born of the moment, but created by economic necessity. Each party bargained for a commodity supplied by the other, and to be utilized for a time extending beyond the contract's specific date of termi-

nation. This arrangement gave rise to the vested right in the employees covered by the contracts to continue to receive the emoluments of their labor beyond the life of the contracts.

4. Although ERISA does not impose any minimum vesting requirements with respect to employee welfare benefit plans, such as the health benefit plan involved in this case, that circumstance does not indicate any intention on the part of Congress to endorse unfettered termination of such plans. This Court must look to the developing federal common law of ERISA and to the intent of the parties to the collective bargaining agreements in determining whether the parties intended that the right of retirees to health and other non-pension benefits should vest, and if so, when. In fashioning a common law rule governing the vesting of non-pension retiree benefits, it is appropriate to consider the broadly ameliorative policies of ERISA, and also to look to pre-ERISA state law governing the vesting of pension and other retiree benefits.

5. The modern view of vesting of pension and other retiree benefits holds that the promise of a pension or other retiree benefits constitutes an offer, which becomes a binding obligation upon performance of the required service by the employee. See, *Rochester Corporation v. Rochester*, 450 F.2d 118 (4th Cir. 1971); *Hoefel v. Atlas Tack Corp.*, 581 F.2d 1 (1st Cir. 1978); *In Re White Farm Equipment*, 42 B.R. 1005, 5 E.B.C. 2130 (N.D.OH 1984).

6. The parties to the 1978, 1981, and 1984 National Bituminous Coal Wage Agreements clearly intended that retirees, upon becoming eligible for a pension, would be entitled to health benefits for life. All three wage agreements contained in Article XX thereof a "General Description of the Health and Retirement Benefits," which repeatedly states, with respect to different classes of pensioners, that

> [s]uch pensioner will be entitled to retain a Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

7. The intent of the parties to ensure that retirees would continue to receive health benefits for life pursuant to the language of the collective bargaining agreements is further indicated by the fact that the parties took great pains to establish a "safety net," in the form of retaining the 1974 Benefit Plan and Trust, to provide an alternative mechanism for the provision of health and other non-pension benefits to those eligible employees, pensioners, and dependents in the event that the last employer was no longer capable of or responsible for providing such benefits.

8. The Court concludes that the parties intended that an employee's right to lifetime health benefits vest upon his retirement. Each collective bargaining agreement and the pension and benefit plans in existence pursuant to such agreement constituted an offer to any employee who was qualified for retirement under that plan that he could accept by retiring during the term of the agreement. Once an employee took that action, the offer-and-acceptance required to constitute a contractual obligation was complete. The employee-pensioner's rights were fixed according to the terms and conditions of the collective bargaining agreement and benefit plans in effect at the time he retired. No pensioner's benefits may be reduced by virtue of the provisions of a collective bargaining agreement executed after his retirement when he was no longer a union member and therefore unrepresented at negotiations. *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 92 S.Ct. 383, 30 L.Ed.2d 341 (1971), n. 20, *United Mine Worker's Health and Retirement Funds v. Robinson*, 455 U.S. 562, 102 S.Ct. 1226, 71 L.Ed.2d 419 (1982), n. 14. This is particularly true in the absence of any clearly expressed agreement of the parties permitting such reductions.

9. ERISA requires the disclosure and reporting to participants and beneficiaries of financial and other information regarding employee benefit plans covered by the Act. 29 U.S.C. §1001(b). That requirement specifically includes the requirement that such disclosures and summary plan descriptions include

> a statement clearly identifying circumstances which may result in . . . loss, forfeiture, or suspension of any benefits that a participant might otherwise reasonably expect the plan to provide on the basis of the [Summary Plan Descriptions] description of benefits . . . . 29 C.F.R. §2520.102-3(1).

In the absence of such disclosure, a fiduciary under ERISA may be precluded from enforcing undisclosed forfeiture provisions. See, *Zittrouer v. Uarco Inc. Group Benefit Plan*, 582 F. Supp. 1471 (N.D.VA 1984).

10. Nothing in the 1978, 1981, or 1984 Wage Agreements, the benefit plans established pursuant to those agreements, or the Summary Plan Descriptions, clearly discloses to plan beneficiaries that their entitlement to health benefits may be forfeited if their last signatory employer subsequently fails to become signatory to successor collective bargaining agreements.

11. The defendant UMWA 1974 Benefit Plan and Trust is obligated to provide health and other non-pension benefits under the provisions of the 1978, 1981, and 1984 National Bituminous Coal Wage Agreements.

12. The obligations of the defendant UMWA 1974 Benefit Plan and Trust must be considered in the light of a unitary interpretation of the 1974 Benefit Plan and Trust and the 1978, 1981, and 1984 Wage Agreements. The essence of these obligations flows from a consideration of the contract, their history, and the trust documents as an entirety; rather than from the parsing of individual phrases narrowly, without adequate attention to the documents' overweening objectives. The overwhelming purpose of the retention of the 1974 Benefit Plan and Trust was to insure continuing, uninterrupted coverage of benefits for eligible pensioners, dependents, and laid-off employees in circumstances where the responsible employer is no longer providing such benefits.

13. The wage agreements contain provisions, including the "no longer in business" language of Article II, designed to insure that the responsible signatory employer is primarily

responsible for the provision of benefits to the employees for whom it accepted responsibility by becoming signatory to the wage agreements. However, under the provisions of Article II of the 1974 Benefit Plan and Trust, the Trustees of the Funds have the authority, and indeed a fiduciary responsibility to the intended beneficiaries, to provide health and other non-pension benefits in instances in which their last signatory employer is no longer able or required to provide such benefits, and thus where the beneficiaries would otherwise lose their benefits.

14. In light of the ruling of the United States Court of Appeals for the Fourth Circuit in the *Royal* case that the obligation of the coal company to provide health and other non-pension benefits terminated upon the expiration of the 1981 National Bituminous Coal Wage Agreement, it is clear that the obligation to provide benefits to the plaintiff devolves upon the defendant UMWA 1974 Benefit Plan and Trust.

15. By failing to provide such benefits and failing to exercise the requisite care, skill, prudence and diligence, particularly in failing to administer the trust for the benefit of its intended beneficiaries, the defendant UMWA 1974 Benefit Plan and Trust has arbitrarily and capriciously breached and violated its fiduciary obligations and duties to the individual plaintiff under ERISA, 29 U.S.C. §100, et seq.

16. For a preliminary injunction to be issued, four factors must first be considered by the Court: (1) Has the petitioner made a strong showing that it is likely to prevail upon the merits? (2) Has the petitioner shown that without such relief it will suffer irreparable injury? (3) Would the issuance of the injunction substantially harm other interested parties? (4) Wherein lies the public interest? See, *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189 (4th Cir. 1977).

17. The Court concludes that a preliminary injunction should issue inasmuch as the plaintiffs have shown a reasonable likelihood of prevailing on the merits of this action and a substantial potentiality of incurring great, immediate and irreparable harm if such preliminary injunction is not issued,

and any harm or loss which may be caused to the defendants by the issuance of such preliminary injunction is disproportionately minor compared to the great, immediate and irreparable harm and loss to the individual plaintiff if it is not issued. Furthermore, it is apparent that the public interest is best served by continued health care coverage of the pensioner and his family.

The Clerk is directed to mail certified copies of this Memorandum Opinion to counsel of record herein.

DATED: July 10, 1986

/s/ _____
DENNIS R. KNAPP, JUDGE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 86-3709
No. 87-3018

DISTRICT 29, UNITED MINE WORKERS OF AMERICA, ET AL.,

Appellees,

v.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Appellant,

THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.,

Amicus Curiae,

and

MANLO MINING CO., ETC., ET AL.,

Defendants.

On Petition for Rehearing with Suggestion for Rehearing In Banc.

ORDER

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Chapman, with the concurrence of Judge Britt, United States District Judge sitting by designation and Judge MacKenzie, United States District Judge sitting by designation.

For the Court,

JOHN M. GREACEN
CLERK

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 85-1336

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; AND JOHN AND MARY DOE,

Appellees,

v.

ROYAL COAL COMPANY,

Appellant,

and

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Defendant.

Argued May 9, 1985.
Decided July 23, 1985.

Forrest H. Roles, Charleston, W.Va. (John R. Woodrum, Washington, D.C., Anna M. Norton, Smith, Heenan & Althen, Charleston, W.Va., on brief) for appellant.

Bradley J. Pyles, Logan, W.Va. (Charles F. Donnelly, Grant Crandall, Crandall, Pyles & Crandall, Logan, W.Va., Deborah Haynes, Larry Harless, Charleston, W.Va., on brief) for appellees.

Before WIDENER and CHAPMAN, Circuit Judges and TURK, United States District Judge for the Western District of Virginia, sitting by designation.

CHAPMAN, Circuit Judge:

The issue in this expedited appeal is whether a coal company's obligation to provide health benefits and life insurance coverage to its retired and disabled coal miners under the National Bituminous Coal Wage Agreements of 1978 and 1981 continues beyond the expiration of those Agreements. Defendant Royal Coal Company (Royal) appeals from a preliminary injunction issued by the district court requiring Royal to provide these benefits to its former employees (or their surviving spouses) who either retired or became disabled prior to the expiration of the 1978 and 1981 Wage Agreements. Royal ceased all active mining operations during the term of the 1981 Wage Agreement and has not become a signatory to the 1984 Wage Agreement. We hold that Royal's obligation to provide health benefits and life insurance coverage to its retired and disabled coal miners under the 1978 and 1981 Wage Agreements ceased upon the expiration of those Agreements. Accordingly, we vacate the district court's preliminary injunction and remand the case for further proceedings.

I

Plaintiffs represent a class of approximately seventy-eight retired and disabled coal miners, and widows of retired and disabled coal miners, whose last employment in the coal industry was with Royal.[1] Plaintiffs brought this action against Royal and the United Mine Workers of America 1974 Benefit Plan and Trust (The 1974 Benefit Plan), alleging that either Royal or the 1974 Benefit Plan was responsible for providing health benefits and life insurance coverage to the class members.

Prior to October 1, 1984, the class members were receiving pension benefits from the United Mine Workers of America 1974 Pension Plan and Trust and nonpension benefits, including health benefits and life insurance coverage, from

[1] Plaintiffs are District 29, United Mine Workers of America, Local Unions Nos. 5821 and 6046, United Mine Workers of America, and three individuals who were either union members who had retired from the employment of Royal or dependent survivors of such members.

their last employer, Royal. Most of the class members (or their husbands, in the case of widows) retired from Royal prior to June 5, 1981, the effective date of the 1981 Wage Agreement, and all of them retired prior to the expiration of the 1981 Wage Agreement on October 1, 1984.

For many years Royal had been a signatory to national agreements negotiated between the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA), including the 1978 and 1981 Wage Agreements. Royal ceased all active mining operations during the term of the 1981 Wage Agreement and has not become a signatory to the 1984 Wage Agreement. Without notice to plaintiffs Royal ceased providing health benefits and life insurance coverage to the class members on or about October 1, 1984. The 1974 Benefit Plan has declined to assume responsibility for providing these benefits on the ground that Royal has sufficient assets to pay the benefits and thus does not qualify as "no longer in business" within the meaning of the 1978 and 1981 Wage Agreements.

Plaintiffs filed this action on March 7, 1985. On March 12, 1985, the district court issued a temporary restraining order requiring Royal to reinstate health benefits and life insurance coverage for a period of ten days. On March 18, the district court held a hearing on plaintiffs' motion for a preliminary injunction, and on April 2, 1985, the district court granted a preliminary injunction against Royal. The district court made no ruling as to the 1974 Benefit Plan's liability. Furthermore, the district court denied Royal's motion to suspend the preliminary injunction pending appeal, but increased the injunction bond from $15,000 to $30,000. This court has jurisdiction over this appeal pursuant to 28 U.S.C. §1292(a).

II

[1, 2] Whether an employer's obligation to provide benefits to its retirees continues beyond the expiration of the underlying collective bargaining agreement depends upon the intent of the parties. *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Yard-*

BEST AVA

Man, Inc., 716 F.2d 1476, 1479 (6th Cir.1983), *cert. denied*, — U.S. —, 104 S.Ct. 1002, 79 L.Ed.2d 234 (1984). *Accord*, *Upholsterers' International Union v. American Pad & Textile Co.*, 372 F.2d 427 (6th Cir.1967); *Bower v. Bunker Hill Co.*, 725 F.2d 1221 (9th Cir.1984). Moreover, whether the parties intended such an employer's obligation to continue beyond the expiration of the collective bargaining agreement is primarily a question of contract interpretation. *See John Wiley & Sons v. Livingston*, 376 U.S. 543, 555, 84 S.Ct. 909, 917, 11 L.Ed.2d 898 (1964); *Local 1251, International Union, UAW v. Robertshaw Controls Co.*, 405 F.2d 29, 33 (2d Cir.1968). Thus, we must first look to the language of the 1978 and 1981 Wage Agreements for any clear manifestations of the parties' intent. *See Yard-Man*, 716 F.2d at 1479; *Kellogg Co. v. NLRB*, 457 F.2d 519, 524 (6th Cir.1972); *cert. denied*, 409 U.S. 850, 93 S.Ct. 58, 34 L.Ed.2d 92 (1972).

Article XX, Section (c)(3)(i) of the 1978 Wage Agreement provides, in pertinent part:

> . . . [E]ach signatory Employer shall establish an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other nonpension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. The benefits provided pursuant to such plans shall be guaranteed *during the term of this Agreement* by each Employer at levels set forth in such plans. . . . (Emphasis added).

The same provision in the 1981 Wage Agreement states, in pertinent part:

> Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other nonpension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The

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> benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed *during the term of this Agreement* by that Employer at levels set forth in such plans. (Emphasis added).

This court recently considered a similar issue under Article XX, Section (c)(3)(i) of the 1978 Wage Agreement in *District 17, United Mine Workers v. Allied Corp.*, 765 F.2d 412 (4th Cir.1985 (*en banc*)). In that case Allied Corporation sold its mining operations during the term of the 1978 Wage Agreement but failed to fulfill its duty under that Agreement's successorship clause of requiring its purchasers to assume its labor contract duties, including its collective bargaining duties with respect to health and other nonpension benefits for its retirees. Allied was not a signatory to the 1981 Wage Agreement. The district court ruled first that Allied's contractual obligation to provide health and other nonpension benefits to its retirees did not terminate with the expiration of the 1978 Wage Agreement and, alternatively, that even if Allied's obligation to provide the benefits did not continue, that Allied was yet obligated to provide them because the purchasers' failure to agree to provide the benefits in subsequent periods was a legally caused result of Allied's breach of the successorship clause contained in the 1978 Wage Agreement. Accordingly, the district court required Allied to continue to pay the benefits, even though the 1978 Wage Agreement had expired, unless and until Allied could negotiate with the purchasers for the latter two companies to provide the benefits.

This court affirmed the district court's decision in a five–four *en banc* decision. The *en banc* majority affirmed the district court's decision on the ground that "Allied's breach occurred in 1980 when it transferred the mines to [the purchasers] without passing on all of its obligation as required by Article I of the 1978 collective bargaining agreement." At 420. However, the *en banc* majority appeared to accept the dissent's position that a coal mine operator's contractual obligation to provide health and other nonpension benefits to its retirees under the 1978 Wage Agreement does not continue

beyond the termination of that Agreement. Specifically addressing Article XX, Section (c)(3)(i) of the 1978 Wage Agreement, the *en banc* majority stated:

> *Although this obligation existed only for the life of the 1978 contract, which expired in 1981*, it was perpetuated in the 1981 and 1984 contracts.
>
> Superficially, *it might appear that none of the defendants is liable for the retirees' benefits.* Because Allied had withdrawn from the coal business in 1980 it was not a signatory to the 1981 contract. Armco and Shannon Pocahontas, on the other hand, although signatories to the 1978 and 1981 contracts, agreed with Allied when they individually acquired the two mines in 1980 that they would not assume the obligations to pay benefits to Allied's retirees. In creating the 1974 Benefit Trust, the union and the coal operators anticipated a successor scenario and agreed that, under such circumstances, the 1974 Benefit Trust could not assume responsibility for payment of the benefits.
>
> *If that were the complete picture, the answer to this dispute simply would be that after expiration of the 1978 agreement on March 27, 1981, no one had a duty to provide the retired miners with the disputed benefits.*

At 417 (emphasis added).

The *en banc* dissent adopted the original panel's majority decision. At 421. *See District 17, United Mine Workers v. Allied Corp.*, 735 F.2d 121 (4th Cir.1984). The panel majority, and thus the *en banc* dissent, was even more explicit than the *en banc* majority in stating that a coal mine operator's obligation to provide health and other nonpension benefits to its retirees under the 1978 Wage Agreement did not continue beyond the expiration of that Agreement. Specifically, the panel majority stated:

> The clear language of the Wage Agreement required health benefit payments only during the term of the

contract and not thereafter. The district court was clearly in error in extending Allied's obligation to pay for these benefits beyond the expiration date (March 26, 1981) of the 1978 contract. Allied is not a signatory to the 1981 National Bituminous Coal Wage Agreement.

735 F.2d at 124. The panel majority also stated:

> There is no factual or legal basis for the district court's conclusion that obligations under the 1978 Wage Agreement extended past its expiration date. Employer obligations and employee rights, under a collective bargaining agreement, do not survive the expiration of the agreement absent a clear intention of the parties. *Local 1251 UAW v. Robertshaw Controls Co.*, 405 F.2d 29 (2nd Cir.1968). The testimony of the contract negotiators clearly show that all rights and benefits were open for negotiation every three years.

735 F.2d at 127.

The panel majority, and thus the dissent in the *en banc* decision, based its interpretation of the 1978 Wage Agreement on the language contained in Article XX, Section (c)(3)(i)[2] and the deposition testimony of the contract negotiators that all rights and benefits under the collective bargaining agreements were open for negotiation every three years. *Id.* Furthermore, this interpretation of the 1978 Wage Agreement is consistent with the International Union's understanding of similar language contained in the 1981 Wage Agreement as expressed by a letter from the officers of the union to the members of the union, including 1974 pensioners and their surviving spouses.[3]

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[2] "The benefits provided pursuant to such plans shall be guaranteed *during the term of this Agreement* by each Employer at levels set forth in such plans." (Emphasis in the panel's opinion).

[3] In anticipation of the expiration of the 1981 Wage Agreement, the officers of the International Union sent a letter to the members of the union informing them of what would occur if the 1981 Wage Agreement

(footnote continues)

[3] Based upon the *en banc* majority's interpretation of the 1978 Wage Agreement in *Allied Corp.*, especially when coupled with the more explicit language contained in the *en banc* dissent, we hold that Royal's obligation to provide health benefits and life insurance coverage to its retired and disabled coal miners under the 1978 and 1981 Wage Agreements does not extend beyond the expiration of those Agreements. Thus, we vacate the district court's preliminary injunction and remand the case for further proceedings.

III

On remand the district court should determine the damages sustained by Royal as a result of the injunction. The district court should also determine whether the 1974 Benefit Plan is obligated to provide benefits to these class members.

VACATED AND REMANDED.

(footnote continued)
expired without a successor agreement providing for their health care being negotiated. The letter stated that in the event of a termination of the 1981 Wage Agreement:

> Health care for you and your dependents will continue from the company which currently provides your coverage in the event your employer is working. If the company which provides your benefits is selectively struck, health care should be available at your expense from the company. All 1974 pensioners who are members in good standing of the UMWA are also eligible to purchase benefits through the UMWA Selective Strike insurance program, if their company is the target of a selective strike, instead of buying insurance from the coal operator. App. at 34.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST

JUNE 7, 1981

ARTICLE II: ELIGIBILITY

The following persons are eligible to receive the health benefits pursuant to Article III for the period from March 27, 1981, through the expiration date of the 1981 Wage Agreement:

A. Pensioners

(1) Health and death benefits under Article III hereof shall be provided to any Pensioner who receives pension benefits under the 1974 Pension Plan, or any successor thereto, and who would otherwise cease to receive benefits because the signatory Employer (including successors and assigns) with whom such Pensioner last worked as a classified Employee is no longer in business (as determined pursuant to Article II F of the 1974 Benefit Plan in effect on March 26, 1981 for signatory Employers no longer in business before June 7, 1981, and pursuant to paragraph E(4) of this Article for Employers signatory to the 1981 Wage Agreement that are no longer in business after June 6, 1981), provided that (i) such Pensioner is not receiving a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, or (ii) such Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding the above, any Pensioner

(a) who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, or

(b) whose last day of credited service under the 1974 Pension plan was on or before December 5, 1977 and as of such last day of credited service:

(i) was eligible for a deferred vested pension based on twenty (20) or more years of credited service, or

(ii) had attained age 55 and was eligible for an age 55 retirement pension as defined in the 1974 Pension Plan,

and as of March 26, 1981, was receiving or had applied and was age and service eligible for, a pension under the 1974 Pension Plan to commence no later than April 1, 1981, and was not eligible as of March 26, 1981, for benefits under an individual employer benefit plan pursuant to Article XX, Section (c)(3) of the National Bituminous Coal Wage Agreement of 1978, shall be eligible for such benefits, subject to all other provisions of this Plan.

(2) Any person who has been covered as a Pensioner under this Plan, and is again employed in classified signatory employment after June 7, 1981, with an Employer, shall have coverage under the Plan suspended during such period of employment. If such person is credited with at least three or more years of service under the 1974 Pension Plan after June 7, 1981 while so employed with the same Employer, coverage shall be terminated under this Plan.

(3) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least $500 per month.

* * *

E. Non-Retired Miners on Lay-Off

Effective March 1, 1980, a non-retired miner who is on lay-off status and who otherwise is eligible for health and other non-pension benefits under the health plan maintained by the Employer by which he is laid-off, as required and limited by the 1978 or 1981 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, but who does not receive such benefits because his Employer is no longer in business and, because of financial inability, has failed to provide such benefits, is eligible to receive such benefits under the 1974 Benefit Plan and Trust, as amended, provided, however, that:

1. In no event shall the benefits payable to any such miner exceed the coverage provided by the 1974 Benefit Plan and Trust;

2. In no event shall the total amount of assets in the 1974 Benefit Plan and Trust used to provide such benefits to this class of non-retired, laid-off miners exceed Two Million Dollars ($2,000,000);

3. The period of coverage provided under this section E shall commence on the day following the day the miner is laid off. The period of coverage is generally defined and limited by the 1978 or 1981 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, *provided however* that notwithstanding any other provision herein, in the 1978 or 1981 Wage Agreement, whichever is applicable, or the "Employers Plan" for UMWA represented employees, the coverage hereunder extends only to covered health services rendered to any such miner on or before the expiration date of the 1981 Wage Agreement, and other non-pension benefits (Life and Accidental Death & Dismemberment Benefits) incurred on or before the expiration date of the 1981 Wage Agreement, regardless of whether such miner has otherwise exhausted his period of eligibility as defined and limited by the 1978 or 1981 Wage Agreement, whichever is applicable, and the "Employers Plan" for UMWA represented employees by that date. Accordingly, benefits are not payable hereunder for any health services rendered to any such miners on or after the expiration date of the 1981 Wage Agreement and other non-pension benefits (Life and Accidental Death & Dismemberent Benefits) incurred on or after the expiration date of the 1981 Wage Agreement.

4. The Trustees of the 1974 Benefit Plan and Trust shall determine, within the limitations described in subparagraphs a and b, below, when an employer is "no loner in business," as that term is used in this section E and Article XX of the 1978 or 1981 Wage Agreement, whichever is applicable. The term "no longer in business" describes those employers signatory to the 1978 or 1981 Wage Agreement, whichever is applicable, which:

a. have ceased all mining operations and have ceased employing persons under the 1978 or 1981 Wage Agreement, whichever is applicable, with no reasonable expectation that such operations will start up again; and

b. are financially unable (through either the business entity that has ceased operations as described in subparagraph a, above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by the 1978 or 1981 Wage Agreement, whichever is applicable, or not) to provide health and other non-pension benefits to its non-retired, laid-off miners, as required by Article XX of the 1978 or 1981 Wage Agreement, whichever is applicable.

* * *

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN & TRUST

[October 1, 1984]

ARTICLE II

The following persons are eligible to receive the health benefits pursuant to Article III for the period from October 1, 1984, through the expiration date of the 1984 Wage Agreement:

A. Pensioners

(1) Health and death benefits under Article III hereof shall be provided to any Pensioner who receives pension benefits under the 1974 Pension Plan, or any successor thereto, and who would otherwise cease to receive benefits because the signatory Employer (including successors and assigns) with whom such Pensioner last worked as a classified Employee is no longer in business (as determined pursuant to Article II F of the 1974 Benefit Plan in effect on March 26, 1981 for signatory Employers no longer in business before

June 7, 1981, and pursuant to paragraph E(4) of this Article for Employers signatory to the 1981 or 1984 Wage Agreement that are no longer in business after June 6, 1981), provided that (i) such Pensioner is not receiving a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, or (ii) such Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding the above, any Pensioner:

(a) who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, or

(b) whose last day of credited service under the 1974 Pension Plan was on or before December 5, 1977 and as of such last day of credited service:

(i) was eligible for deferred vested pension based on twenty (20) or more years of credited service; or

(ii) had attained age 55 and was eligible for an age 55 retirement as defined in the 1974 Pension Plan,

and as of March 26, 1981, was receiving, or had applied and was age and service eligible for, a pension under the 1974 Pension Plan to commence no later than April 1, 1981, and was not eligible as of March 26, 1981, for benefits under an individual employer benefit plan pursuant to Article XX, Section (c)(3) of the National Bituminous Coal Wage Agreement of 1978, shall be eligible for such benefits subject to all other provisions of this Plan. Any Pensioner who was pension eligible on June 6, 1981, and whose last classified Employer is no longer in business pursuant to E(4) of this Article shall not be denied benefits provided herein solely because of subsequent employment for an employer who was not signatory to the Wage Agreement.

(2) Any person who has been covered as a Pensioner under this Plan, and is again employed in classified signatory employment after June 7, 1981, with an Employer, shall have coverage under the Plan suspended during such period of employment. If such person is credited with at least three or

more years of service under the 1974 Pension Plan after June 7, 1981, while so employed with the same Employer, coverage shall be terminated under this Plan.

(3) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least $500 per month.

* * *

E. Non-Retired Miners of Lay-Off

Effective March 1, 1980, a non-retired miner who is on lay-off status and who otherwise is eligible for health and other non-pension benefits under the health plan maintained by the Employer by which he is laid-off, as required and limited by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, but who, does not receive such benefits because his Employer is no longer in business and, because of financial inability, has failed to provide such benefits, is eligible to receive such benefits under the 1974 Benefit Plan and Trust, as amended, provided, however, that:

1. In no event shall the benefits payable to any such miner exceed the coverage provided by the 1974 Benefit Plan and Trust;

2. In no event shall the total amount of assets in the 1974 Benefit Plan and Trust used to provide such benefits to this class of non-retired, laid-off miners exceed Two Million Dollars ($2,000,000);

3. The period of coverage provided under this section E shall commence on the day following the day the miner is laid off. The period of coverage is generally defined and limited by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, *provided however* that notwithstanding any other provision herein, in the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, or the "Employers Plan" for UMWA represented employees, the coverage hereunder

extends only to covered health services rendered to any such miner on or before the expiration date of the 1984 Wage Agreement, and other non-pension benefits (Life and Accidental Death & Dismemberment Benefits) incurred on or before the expiration date of the 1984 Wage Agreement, regardless of whether such miner has otherwise exhausted his period of eligibility as defined and limited by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, and the "Employers Plan" for UMWA represented employees by that date. Accordingly, benefits are not payable hereunder for any health services rendered to any such miners on or after the expiration date of the 1984 Wage Agreement and other non-pension benefits (Life and Accidental Death & Dismemberment Benefits) incurred on or after the expiration date of the 1984 Wage Agreement.

4. The Trustees of the 1974 Benefit Plan and Trust shall determine, within the limitations described in subparagraphs a and b, below, when an employer is "no longer in business," as that term is used in this section J and Article XX of the 1978, 1981 or 1984 Wage Agreement, whichever is applicable. The term "no longer in business" describes those employers signatory to the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, which:

a. have ceased all mining operations and have ceased employing persons under the 1978, 1981 or 1984 Wage Agreement whichever is applicable, with no reasonable expectation that such operations will start up again, and

b. are financially unable (through either the business entity that has ceased operations as described in subparagraph a, above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, or not) to provide health and other non-pension benefits to its non-retired, laid-off miners, as required by Article XX of the 1978, 1981 or 1984 Wage Agreement, whichever is applicable.

In the event that an Employer files for or is placed in bankruptcy under the federal bankruptcy laws, the Trustees

may, in their discretion, where circumstances indicate it is prudent and pending their own investigation, grant affected retirees and other employees temporary eligibility under Article II of this Plan; provided that, if the Trustees finally determine that the Employer should not be considered to be "no longer in business," the affected retirees and employees shall become ineligible for benefits under this Plan, and the Employer shall be liable to the Plan for all benefits paid prior to the determination of ineligibility. Temporary eligibility may not be granted if the Trustees have a reason to believe that the Employer intends to continue in business or that there exist any financially able successors, assigns, or related entities which may affect eligibility under subparagraph (b) above. Such temporary eligibility shall be deemed to be effective as of the date on which the Employer became no longer in business; and such date may be established to have occurred prior to the date on which the Trustees make their determination.

* * *

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1978

ARTICLE XX

HEALTH AND RETIREMENT BENEFITS

Section (a) **General Purpose**

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts referred to in Sections (b) and (c) of this Article.

A general description of the benefits to be provided appears immediately following this Article.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust has assumed the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from the 1950 Benefit Trust, the 1974 Benefit Trust, or the individual benefit plans referred to in Section (c).

The general purpose of the plans referred to in this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

Section (b) **1950 Plans and Trusts**

The United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust") is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund have heretofore been amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

The United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) **1974 Plans and Trusts**

(1) The United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust") is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and was effective December 6, 1974.

(2) The 1974 Benefit Plan and Trust ("1974 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides certain health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust and under the terms of this Article.

(3) (i) Except as provided in (ii) below, effective on June 1, 1978, each signatory Employer shall establish an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. The benefits provided pursuant to such plans shall be guaranteed during the term of this Agreement by each Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection will be incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

During the interim period commencing on the effective date of this Agreement and ending on May 31, 1978, each Employer shall pay to the 1974 Benefit Trust as provided in Section (d)(1)(iv) of this Article.

(ii) In lieu of (i) above, any signatory Employer may elect to implement the above health benefit coverage through a private insurance carrier(s) on the effective date of this Agreement. Any signatory Employer who elects under this subparagraph (ii) to implement health benefit coverage through a private insurance carrier(s), from the date of this Agreement, shall have no further responsibilities, except as provided in Section (d)(1)(iv), (v)(a) and (vi)(a) of this Article, to make contributions to or otherwise to be responsible for benefits provided under the 1974 Benefit Plan and Trust.

(iii) The 1974 Benefit Plan and Trust shall continue after May 31, 1978, for the sole purpose of providing health and other non-pension benefits, during the term of this Agree-

ment, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) from which he retired is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last classified employment was a signatory Employer which is no longer in business.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

Section (d) **Contributions by Employers**

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per hours worked by each of the Employer's Employees who perform classified work under this Agreement.

BCOA may elect to change or convert the cents per ton basis of funding contained herein to a different method of funding so long as such alternate method produces the equivalent contribution to that provided herein on a cents

per ton basis. It is further understood that if such election is exercised all references to cents per ton contributions or obligations arising therefrom in this Article shall be read as to reform such references to the appropriate method of funding.

(i) Into the 1950 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 95.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 95.0¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 95.0¢ per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 35.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 35.5¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 35.5¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 75.0¢ per hour on each such hour worked plus 8.5¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 76.0¢ per hour on each such hour worked plus 8.0¢ per ton on each such ton; for the period beginning March 27, 1980, and ending when this Agreement is terminated, 75.0¢ per hour on each such hour worked and 8.0¢ per ton on each such ton.

(iv) Into the 1974 Benefit Trust: for the period beginning on March ....., 1978, and ending on April ....., 1978, 16.5¢ per hour on each such hour worked; for the period beginning on April ....., 1978, and ending when this Agreement is terminated, 2.0¢ per hour on each such hour worked. Any signatory Employer who does not elect to implement coverage through a private insurance carrier(s) on the effective date of the Agreement shall contribute for the period beginning March ....., 1978, and ending May 31, 1978, an additional 86.0¢ per hour on each such hour worked.

(v) In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hours worked contributions converted to tonnage equivalents).

(a) Into the 1950 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 95.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 95.0¢ per ton on each such ton; for the period beginning March 27, 1980, and ending when this Agreement is terminated, 95.0¢ per ton on each such ton;

(b) Into the 1950 Benefit Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 35.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 35.0¢ per ton on each such ton; for the period beginning March 27, 1980, and ending when this Agreement is terminated, 35.5¢ per ton on each such ton;

(c) Into the 1974 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 58.5¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 59.0¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 58.0¢ per ton on each such ton; and

(d) Into the 1974 Benefit Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 1.0¢ per ton for each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 1.0¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 1.0¢ per ton on each such ton;

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of

competent jurisdiction determines by a final decision that is not appealable that the provision appearing in the paragraph (v) just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

(vi) At any time during the term of this Wage Agreement, the Bituminous Coal Operators' Association may reallocate the contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which reallocations will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the Union, and to the Trustees (who shall in turn notify all contributing Employers) of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) In lieu of or in addition to making the reallocations set forth above, BCOA may, to the extent necessary to fund the benefits provided by the 1950 Benefit Plan and 1974 Benefit Plan during the term of this Agreement, increase the rate of contributions to be made to the 1950 Benefit Trust and 1974 Benefit Trust during the term of this Agreement, which contributions, as may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement. In the event the BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the effective date of this Agreement

has withdrawn prior to the time when such reallocation or adjustment in contributions is to be made to effectuate the guarantee of health benefits, then action to be taken under this Section, or any other Section of this Article requiring action by BCOA, may be taken by a majority vote, based on tonnage, of Employers who were BCOA members on the effective date of this Agreement.

(b) Except as otherwise specifically set forth in this Article, no monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust;

(c) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reasonably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code;

(d) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(e) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts, except to the extent provided for in Section (d)(1)(vi)(a); and

(f) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which

will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

* * *

GENERAL DESCRIPTION OF THE HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1950 Pension and Benefit Plans and Trusts, the UMWA 1974 Pension Plan and Trust and the individual health and benefit plans. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the Plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts, copies of which are on file and available for inspection at the offices of the UMWA Health & Retirement Fund, 2021 K Street, N.W., Washington, D.C.

(1) PENSIONS FOR MINERS RETIRED UNDER THE 1950 PENSION PLAN:

Pension payments for the months of February and March, 1978, will be reinstated at prior levels and payment will be made as soon as possible. The differential between pensioners receiving black lung benefits and those not receiving black lung benefits is eliminated. Beginning on the first of the month following the effective date of this Agreement, pension benefits are according to the following schedules:

(a) For pensioners with at least 20 years of credited service who retired on other than a disability pension and who receive state or federal Black Lung benefits, the pension is immediately increased on the first of the month following the effective date of this Agreement to $275 per month.

(b) For pensioners with at least 20 years of credited service who retired on other than a disability pension and who do not receive state or federal Black Lung benefits, the

pension is immediately increased on the first of the month following the effective date of this Agreement to $275 per month.

(c) For pensioners who retired on a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $130 per month, with a second increase one year later to $135 per month, and a third increase two years later to $137.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(d) For pensioners with less than 20 years of credited service, the pension is unchanged from prior levels.

Any pensioner who is receiving a disability pension or a pension with at least twenty years of credited service under this Plan is entitled to receive health benefits until death for each month in which he earns less than $200. As in the case of a pensioner, a widow is entitled to receive health benefits until her death or remarriage for each month in which the widow earns less than $200.

(2) PENSIONS FOR MINERS WHO RETIRED UNDER THE 1974 PENSION PLAN PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT:

Beginning on the first of the month following the effective date of this Agreement, pension benefits for pensioners who retired prior to the effective date of this Agreement are according to the following schedules:

(a) For pensioners who retired on other than a deferred vested or minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement by $10 per month, with a second increase of $10 per month one year later, and a third increase of $5 per month two years later. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(b) For pensioners who retired on a minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $130 per month, with a second increase one year later to $135 per month, and a third increase two years later to $137.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(3) PENSIONS FOR MINERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT:

A working miner who retires on or after the effective date of this Agreement and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon the 1974 Pension Plan. Subject to (4) below, full credit is provided for years worked as a classified Employee in mines of signatory Employers.

The earliest retirement age is 55. A miner may retire at 55 with 10 or more years of signatory service.

Pension benefits are increased as a miner accumulates years of signatory service. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

For retirement on or after the effective date of this Agreement the maximum benefit schedule is increased to the following:

- $13.50 per month multiplied by the years of signatory service for the first 10 such years, plus

- $14.00 per month multiplied by the years of signatory service for the second 10 such years, plus

- $14.50 per month multiplied by the years of signatory service for the third 10 such years, plus

• $15.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 20.

* * *

(10) HEALTH CARE:

Health benefits are restored for all beneficiaries defined as eligible under the 1950 and 1974 Benefit Plans and Trusts for services rendered on and after the effective date of this Agreement. Such benefits are guaranteed during the term of this Agreement, subject to the terms of this Agreement, at the level of benefits provided in the prior Agreement subject to the following:

(a) Participants in the 1950 Benefit Plan will continue to have their health benefits provided by the UMWA Health and Retirement Funds' 1950 Benefit Plan and Trust. Upon request, the Participant shall receive a copy of the bill for services rendered by the physician, hospital, or clinic.

(b) Working miners will be provided health benefits through their individual Employers, or, until May 31, 1978, through the 1974 Benefit Plan and Trust.

(c) Pensioners, other than deferred vested pensioners with less than 20 years of service, retired under the 1974 Pension Plan will be provided health benefits through the Employer from which they retired.

(d) Pensioners, both regular and disabled, their surviving spouses and dependents, who retired under the 1974 Pension Plan or any successor thereto, whose last classified employment was with a signatory Employer, (including successors and assigns) which is no longer in business will have benefits provided under the 1974 Benefit Plan and Trust.

(e) For new Employees and their dependents, no pregnancy benefits will be provided for a pregnancy which occurs prior to the first day of employment. All other benefits are covered.

(f) Benefits for prescription drugs will be subject to a $5.00 co-payment per prescription up to a $50 annual maximum per family.

(g) Benefits for office visits to physicians, house calls by physicians, in-hospital medical care, visits to a clinic or the out-patient department of a hospital will be subject to a $7.50 per visit co-payment in the case of working miners and their dependents up to an annual maximum of $150 per family and will be subject to a $5.00 per visit co-payment in the case of retired miners (and Surviving Spouses) and their dependents up to an annual maximum of $100 per family.

(h) Spouses of working miners who died, who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 60 months, whichever occurs first.

(i) Deferred vested pensioners with less than 20 years of service under the 1974 Pension Plan and miners who will receive a pension with less than 20 years of service under the 1950 Pension Plan are ineligible for health care. Disability pensioners under both the 1950 and 1974 Pension Plans will continue to receive their Health Services card.

(j) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A new health services card identifying the Participant's eligibility for benefits under the health plan will be provided by the Employer as soon as possible. In the meantime, the existing Health Services card will be honored.

The Trustees of the UMWA Health and Retirement Funds will resolve any disputes to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1981

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (a) **General Purpose**

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts referred to in Sections (b) and (c) of this Article.

A general description of the benefits to be provided appears immediately following this Article. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust has assumed the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from the 1950 Benefit Trust, the 1974 Benefit Trust, or the individual benefit plans referred to in Section (c).

The general purpose of the plans referred to in this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; health care and financial support for eligible disabled miners; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

Section (b) **1950 Plans and Trusts**

The United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust") is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund have heretofore been amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

The United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) **1974 Plans and Trusts**

(1) The United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust") is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and was effective December 6, 1974.

(2) The 1974 Benefit Plan and Trust ("1974 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides certain health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust and under the terms of this Article.

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans

established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax pur-

poses of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

Section (d) **Contributions by Employers**

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per hours worked by each of the Employer's Employees who perform classified work under this Agreement.

BCOA may elect to change or convert the cents per ton basis of funding contained herein to a different method of funding so long as such alternate method produces the equivalent contribution to that provided herein on a cents per ton basis. It is further understood that if such election is exercised all references to cents per ton contributions or obligations arising therefrom in this Article shall be read as to reform such references to the appropriate method of funding.

(i) Into the 1950 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 95.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, $1.11 per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 40.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 40.0¢ per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, 41.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, $1.037 per hour on each such hour worked plus 8.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 99.7¢ per hour on each such hour worked plus 8.0¢ per ton on each such ton; for the period beginning June 7, 1983, and ending when this Agreement is terminated, $1.017 per hour on each such hour worked plus 8.0¢ per ton on each such ton.

(iv) Into the 1974 Benefit Trust: for the period beginning on June 7, 1981, and ending when this Agreement is terminated, 0.0¢ per hour on each such hour worked.

(v) In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hours worked contributions converted to tonnage equivalents).

(a) Into the 1950 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 95.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, $1.11 per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(b) Into the 1950 Benefit Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 40.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 40.0¢ per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, 41.0¢ per ton on each such ton;

(c) Into the 1974 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 72.8¢ per ton on each

such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 70.3¢ per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated 71.6¢ per ton on each such ton; and

(d) Into the 1974 Benefit Trust: for the period beginning June 7, 1981, and ending when this Agreement is terminated, 0.0¢ per ton on each such ton.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in paragraph (v) just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Coal Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

(vi) At any time during the term of this Wage Agreement, the Bituminous Coal Operators' Association may reallocate the contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which reallocations will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the Union, and to the Trustees (who shall in turn notify all contributing Employers) of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) In lieu of or in addition to making the reallocations set forth above, BCOA may, to the extent necessary to fund the benefits provided by the 1950 Benefit Plan and 1974 Benefit Plan during the term of this Agreement, increase the rate of contributions to be made to the 1950 Benefit Trust and 1974 Benefit Trust during the term of this Agreement, which contributions, as may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement. In the event the BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the effective date of this Agreement has withdrawn prior to the time when such reallocation or adjustment in contributions is to be made to effectuate the guarantee of health benefits, then action to be taken under this Section, or any other Section of this Article requiring action by BCOA, may be taken by a majority vote, based on tonnage, of Employers who were BCOA members on the effective date of this Agreement.

(b) Except as otherwise specifically set forth in this Article, no monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust;

(c) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reasonably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code;

(d) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(e) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts, except to the extent provided for in Section (d)(1)(vi)(a); and

(f) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

* * *

GENERAL DESCRIPTION OF THE HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1950 Pension and Benefit Plans and Trusts, the UMWA 1974 Pension Plan and Trust and the individual Employer's benefit plans. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts, copies of which are on file and available for inspection at the offices of the UMWA Health & Retirement Fund, 2021 K Street, N.W., Washington, D.C. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

(1) PENSIONS FOR MINERS RETIRED UNDER THE 1950 PENSION PLAN:

Beginning on the first of the month following the effective date of this Agreement, pension benefits are according to the following schedules:

(a) For pensioners with at least 20 years of credited service who retired on other than a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $290 per month, with a second increase one year later to $305 per month, and a third increase two years later to $315 per month.

(b) For pensioners who retired on a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $147.50 per month, with a second increase one year later to $152.50 per month, and a third increase two years later to $157.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

Any pensioner who is receiving a disability pension or a pension with at least twenty years of credited service under this Plan is entitled to receive health benefits until death except during any month in which he is regularly employed at an earnings rate equivalent to at least $500 per month. A widow is entitled to receive health benefits until her death or remarriage subject to the same $500 earnings limit.

(1A) 1950 WIDOWS PENSION

A new benefit will be provided through the 1950 Pension Plan to widows of miners who were receiving a 1950 pension at the time of their death. The benefit will begin March 1, 1982 and will be $95 per month. Existing as well as future widows of 1950 Pensioners will receive this benefit.

(2) PENSIONS FOR MINERS WHO RETIRED UNDER THE 1974 PENSION PLAN PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT:

Beginning on the first of the month following the effective date of this Agreement, pension benefits for pensioners who retired prior to the effective date of this Agreement are according to the following schedules:

(a) For pensioners who retired on other than a deferred vested or minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement by $10 per month, with a second increase of $10 per month one year later, and a third increase of $5 per month two years later. Such pensioner will be entitled to retain his Health Services card for life, subject to the $500 earnings limit. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(b) For pensioners who retired on a minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $142.50 per month, with a second increase one year later to $147.50 per month, and a third increase two years later to $150.00 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(3) PENSIONS FOR MINERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT:

A working miner who retires on or after the effective date of this Agreement and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon the 1974 Pension Plan. Subject to (4) below, full credit is provided for years worked as a classified Employee in mines of signatory Employers.

The earliest retirement age is 55. A miner may retire at 55 with 10 or more years of signatory service.

Pension benefits are increased as a miner accumulates years of signatory service. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

For retirement during the first two years of this Agree-

ment the maximum benefit schedule is increased to the following:

- $14.50 per month multiplied by the years of signatory service for the first 10 such years, plus
- $15.00 per month multiplied by the years of signatory service for the second 10 such years, plus
- $15.50 per month multiplied by the years of signatory service for the third 10 such years, plus
- $16.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

For retirement during the third year of this Agreement, the maximum benefit schedule is increased to the following:

- $15.50 per month multiplied by the years of signatory service for the first 10 such years, plus
- $16.00 per month multiplied by the years of signatory service for the second 10 such years, plus
- $16.50 per month multiplied by the years of signatory service for the third 10 years, plus
- $17.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

* * *

(10) HEALTH CARE:

Health care benefits are guaranteed during the term of this Agreement, subject to the terms of this Agreement at the level of benefits provided in the 1950 Benefit Plan, 1974 Benefit Plan, and the Employer Benefit Plan.

(a) Participants in the 1950 Benefit Plan will continue to have their health benefits provided by the UMWA Health and Retirement Funds' 1950 Benefit Plan and Trust. The Participant shall receive an Explanation of Benefits (EOB) for services rendered by the physician, hospital, or clinic.

(b) Working miners will be provided health benefits through their individual Employer's benefit plan.

(c) Pensioners, other than deferred vested pensioners with less than 20 years of service, retired under the 1974 Pension Plan will be provided health benefits through the Employer from which they retired.

(d) Pensioners, both regular and disabled, their surviving spouses and dependents, who retired under the 1974 Pension Plan or any successor thereto, whose last signatory classified employment was with a signatory Employer, (including successors and assigns) which is no longer in business will have benefits provided under the 1974 Benefit Plan and Trust.

(e) Pregnancy benefits will be provided in the same manner as for any other disability.

(f) Only benefits for prescription drugs (only those drugs requiring a prescription for dispensing) are provided; they will be subject to a $5.00 co-payment per prescription up to a $50 annual maximum per family.

(g) Benefits for office visits to physicians, house calls by physicians, in-hospital medical care, visits to a clinic or the out-patient department of a hospital will be subject to a $7.50 per visit co-payment in the case of working miners and their dependents up to an annual maximum of $150 per family and will be subject to a $5.00 per visit co-payment in the case of retired miners (and Surviving Spouses) and their dependents up to an annual maximum of $100 per family.

(h) Spouses of working miners who died, who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 60 months, whichever occurs first, subject to the $500 earnings limit.

(i) Deferred vested pensioners with less than 20 years of service under the 1974 Pension Plan and miners who will receive a pension with less than 20 years of service under the 1950 Pension Plan are ineligible for health care. Disability pensioners under both the 1950 and 1974 Pension Plans will continue to receive their Health Services card.

(j) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A health services card identifying the Participant's eligibility for benefits under the health plan shall be provided by the Employer.

The Trustees of the UMWA Health and Retirement Funds will resolve any disputes to assure consistent application of the health plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

* * *

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1984

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (a) **General Purpose**

This Article makes provision of pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts referred to in Sections (b) and (c) of this Article.

A general description of the benefits to be provided appears immediately following this Article. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust has assumed the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from the 1950 Benefit Trust, the 1974 Benefit Trust, or the individual benefit plans referred to in Section (c).

The general purpose of the plans referred to in this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; health care and financial support for eligible disabled miners; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

Section (b) **1950 Plans and Trusts**

The United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust") is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund have heretofore been amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

The United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) **1974 Plans and Trusts**

(1) The United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust") is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and was effective December 6, 1974.

(2) The 1974 Benefit Plan and Trust ("1974 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides certain health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be

provided are as set forth in the plan under the 1974 Benefit Trust and under the terms of this Article.

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

Section (d) **Contributions by Employers**

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per hours worked by each of the Employer's Employees who perform classified work under this Agreement.

BCOA may elect to change or convert the cents per ton basis of funding contained herein to a different method of funding so long as such alternate method produces the

equivalent contribution to that provided herein on a cents per ton basis. It is further understood that if such election is exercised all references to cents per ton contributions or obligations arising therefrom in this Article shall be read as to reform such references to the appropriate method of funding.

(i) Into the 1950 Pension Trust: for the period beginning October 1, 1984, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning October 1, 1984, and ending September 30, 1986, 61.0¢ per ton on each such ton; and for the period beginning October 1, 1986, and ending when this Agreement is terminated, 64.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning October 1, 1984, and ending September 30, 1985, $1.03 per hour on each such hour worked plus 7.0¢ per ton on each such ton; for the period beginning October 1, 1985, and ending September 30, 1986, 97.0¢ per hour on each such hour worked plus 6.6¢ per ton on each such ton; for the period beginning October 1, 1986, and ending September 30, 1987, 97.0¢ per hour on each such hour worked plus 6.6¢ per ton on each such ton; for the period beginning October 1, 1987, and ending when this Agreement is termianted, $1.02 per hour on each such hour worked plus 6.6¢ per ton on each such ton.

(iv) Into the 1974 Benefit Trust: for the period beginning October 1, 1984, and ending when this Agreement is terminated, 0.0¢ per hour on each such hour worked.

(v) In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts

shown below include cents per hours worked contributions converted to tonnage equivalents).

(a) Into the 1950 Pension Trust: for the period beginning October 1, 1984, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(b) Into the 1950 Benefit Trust: for the period beginning October 1, 1984, and ending September 30, 1986, 61.0¢ per ton on each such ton; and for the period beginning October 1, 1986, and ending when this Agreement is terminated, 64.0¢ per ton on each such ton;

(c) Into the 1974 Pension Trust: for the period beginning October 1, 1984, and ending September 30, 1985, 52.7¢ per ton on each such ton; for the period beginning October 1, 1985, and ending September 30, 1986, 49.1¢ per ton on each such ton; and for the period beginning October 1, 1986, and ending September 30, 1987, 48.7¢ per ton on each such ton; and for the period beginning October 1, 1987, and ending when this Agreement is terminated 50.8¢ per ton on each such ton; and

(d) Into the 1974 Benefit Trust; for the period beginning October 1, 1984, and ending when this Agreement is terminated, 0.0¢ per ton on each such ton.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in the paragraph (v) just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

(vi) At any time during the term of this Wage Agreement, the Bituminous Coal Operators' Association may real-

locate the contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which reallocation will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the Union, and to the Trustees (who shall in turn notify all contributing Employers) of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) In lieu of or in addition to making the reallocations set forth above, BCOA may, to the extent necessary to fund the benefits provided by the 1950 Benefit Plan and 1974 Benefit Plan during the term of this Agreement, increase the rate of contributions to be made to the 1950 Benefit Trust and 1974 Benefit Trust during the term of this Agreement, which contributions, as may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement. In the event the BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the effective date of this Agreement has withdrawn prior to the time when such reallocation or adjustment in contributions is to be made to effectuate the guarantee of health benefits, then action to be taken under this Section, or any other Section of this Article requiring action by BCOA, may be taken by a majority vote, based on tonnage, of Employers who were BCOA members on the effective date of this Agreement.

(b) Except as otherwise specifically set forth in this Article, no monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust;

(c) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reason-

ably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code;

(d) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(e) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts, except to the extent provided for in Section (d)(1)(vi)(a); and

(f) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

* * *

GENERAL DESCRIPTION OF THE HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1950 Pension and Benefit Plans and Trusts, the UMWA 1974 Pension Plan and Trust and the individual health and benefit plans. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the Plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act

of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts, copies of which are on file and available for inspection at the offices of the UMWA Health & Retirement Fund, 2021 K Street, N.W., Washington, D.C. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

(1) PENSIONS FOR MINERS RETIRED UNDER THE 1950 PENSION PLAN:

Beginning on the first of the month following the effective date of this Agreement, pension benefits are according to the following schedules:

(a) For pensioners with at least 20 years of credited service who retired on other than a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $325 per month, with a second increase effective October 1, 1987, to $335 per month.

(b) For pensioners who retired on a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $167.50 per month, with a second increase effective October 1, 1987, to $177.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

Any pensioner who is receiving a disability pension or a pension with at least twenty years of credited service under this Plan is entitled to receive health benefits until death except during any month in which he is regularly employed at an earnings rate equivalent to at least $500 per month. A widow is entitled to receive health benefits until her death or remarriage subject to the same $500 earnings limit.

(1A) 1950 WIDOWS PENSION

A Widow's Pension is provided through the 1950 Pension Plan to widows of miners who were receiving a 1950 pension

at the time of their death. The benefit is immediately increased to $100 per month with a second increase effective October 1, 1987, to $105 per month. Existing as well as future widows of 1950 Pensioners will receive this benefit.

(2) PENSIONS FOR MINERS WHO RETIRED UNDER THE 1974 PENSION PLAN PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT:

Beginning on the first of the month following the effective date of this Agreement, pension benefits for pensioners who retired prior to the effective date of this Agreement are according to the following schedules:

(a) For pensioners who retired on other than a deferred vested or minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement by $10 per month, with a second increase of $10 per month effective October 1, 1987. Such pensioner will be entitled to retain his Health Services card for life, subject to the $500 earnings limit. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(b) For pensioners who retired on a minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $160.00 per month, with a second increase effective October 1, 1987, to $170.00 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(c) For surviving spouses of 1974 pensioners who retired on other than a deferred vested pension, the benefit is immediately increased by $5.00 per month, with a second increase of $5.00 per month effective October 1, 1987. Such surviving spouse will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(3) PENSIONS FOR MINERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT:

A working miner who retires on or after the effective date of this Agreement and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon the 1974 Pension Plan. Subject to (4) below, full credit is provided for years worked as a classified Employee in mines of signatorty Employers.

The earliest retirement age is 55. A miner may retire at 55 with 10 or more years of signatory service.

Pension benefits are increased as a miner accumulates years of signatory service. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

For retirement during the first two years of this Agreement the maximum benefit schedule is increased to the following:

- $16.50 per month multiplied by the years of signatory service for the first 10 such years, plus
- $17.00 per month multiplied by the years of signatory service for the second 10 such years, plus
- $17.50 per month multiplied by the years of signatory service for the third 10 such years, plus
- $18.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

For retirement on or after October 1, 1987, the maximum benefit schedule is increased to the following:

- $17.00 per month multiplied by the years of signatory service for the first 10 such years, plus
- $17.50 per month multiplied by the years of signatory service for the second 10 such years, plus

• $18.00 per month multiplied by the years of signatory service for the third 10 years, plus

• $18.50 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

* * *

(10) HEALTH CARE:

Health care benefits are guaranteed during the term of this Agreement, subject to the term of this Agreement at the level of benefits provided in the 1950 Benefit Plan, 1974 Benefit Plan, and the Employer Benefit Plan.

(a) Participants in the 1950 Benefit Plan will continue to have their health benefits provided by the UMWA Health and Retirement Funds' 1950 Benefit Plan and Trust. The Participant shall receive an Explanation of Benefits (EOB) for services rendered by the physician, hospital, or clinic.

(b) Working miners will be provided health benefits through their individual Employer's benefit plan.

(c) Pensioners, other than deferred vested pensioners with less than 20 years of service, retired under the 1974 Pension Plan will be provided health benefits through the Employer from which they retired.

(d) Pensioners, both regular and disabled, their surviving spouses and dependents, who retired under the 1974 Pension Plan or any successor thereto, whose last signatory classified employment was with a signatory Employer, (including successors and assigns) which is no longer in business will have benefits provided under the 1974 Benefit Plan and Trust.

(e) Pregnancy benefits will be provided in the same manner as for any other disability.

(f) Only benefits for prescription drugs (only those drugs requiring a prescription for dispensing) are provided; they will be subject to a $5.00 co-payment per prescription up to a $50 annual maximum per family.

(g) Benefits for office visits to physicians, house calls by physicians, in-hospital medical care, visits to a clinic or the out-patient department of a hospital will be subject to a $7.50 per visit co-payment in the case of working miners and their dependents up to an annual maximum of $150 per family and will be subject to a $5.00 per visit co-payment in the case of retired miners (and Surviving Spouses) and their dependents up to an annual maximum of $100 per family.

(h) Spouses of working miners who died, who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 60 months, whichever occurs first.

(i) Deferred vested pensioners with less than 20 years of service under the 1974 Pension Plan and miners who will receive a pension with less than 20 years of service under the 1950 Pension Plan are ineligible for health care. Disability pensioners under both the 1950 and 1974 Pension Plans will continue to receive their Health Services card.

(j) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A health services card identifying the Participant's eligibility for benefits under the health plan will be provided by the Employer.

The Trustees of the UMWA Health and Retirement Funds shall resolve any disputes including excessive fee disputes, to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

* * *

UMWA PROPOSAL
AUG. _____, 1984

OLD LANGUAGE

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (c) **1974 Plans and Trusts**

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plans(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitle-

ment shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

NEW LANGUAGE

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (c) **1974 Plans and Trusts**

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented

through [an] a *single* insurance carrier[s] *(designated by the Union and Employers)*, health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. *Health and other non-pension benefits shall be vested for life for all pensioners who are receiving such benefits or who will become eligible to receive such benefits under an Employee Benefit Plan from an Employer who no longer has an obligation to contribute to the 1974 Pension Plan unless a successor or assign assumes the obligation for payment of such benefits. Such entitlement for lifetime benefits shall extend to surviving spouses and other beneficiaries who are eligible for such benefits as a result of their relationship to a pensioner described above. In the event such an Employer or its successors or assigns shall subsequently go out of business the 1974 Benefit Plan & Trust shall provide such benefits to said pensioners, surviving spouses and other beneficiaries, pursuant to (ii) below.* The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors

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and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses. *Notwithstanding the above, if a pensioner, Employee or the Funds has no express statutory or case-law defined right of recovery with a reasonable prospect of recovery from said entities, the Employer shall be deemed "no longer in business."*

In order to ensure continuous coverage pending a determination of eligibility in out-of-business cases, the Trustees shall make available these health and other non-pension benefits through the 1974 Benefit Plan & Trust to eligible pensioners, Employees, surviving spouses, and dependents of Employers who are in bankruptcy under Chapter 7 or 11 of the Federal Bankruptcy Code. Such coverage shall be made available as soon as any filing for bankruptcy has been entered, contingent on each pensioner, Employee or surviving spouse making an assignment of his claim for said benefits against the Employer to the Funds.

The Trustees shall reconsider all "out of business" determinations made pursuant to the provisions of the NBCWA of 1981 under the criteria established herein.

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The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

STATUTES INVOLVED

National Labor Relations Act, Section 8(d)

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

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(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)–(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158 to 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

29 U.S.C. § 158(d)

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Employee Retirement Income Security Act of 1974, Sections 402 and 404

ESTABLISHMENT OF PLAN

Sec. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in

section 405(c)(1), may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

29 U.S.C. § 1102

FIDUCIARY DUTIES

Sec. 404. (a)(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title or title IV.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3)), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B)

is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5)).

(b) Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's, or beneficiary's exercise of control.

29 U.S.C. § 1104